CORRESPONDENCE

ON THE

ABOLITION AND MODIFICATION

OF

CRIMINAL APPEALS.

CALCUTTA:

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No. 319.

To B. J. COLVIN, ESQ.,

Officiating Register, Sudder Court.

FORT WILLIAM, *the 19th February*, 1845.

SIR,

Judicial.

I am directed by the Right Honorable the Governor of Bengal to forward, for the purpose of being laid before the Sudder Court, the accompanying extract (para. 18) from a Dispatch of the Hon'ble the Court of Directors, No. 20 of 21st August, 1844.

Para. 18. "We observe from the Statement of the Police Committee that the proceedings held both by the Darogah and by the Magistrate are diffuse and redundant to a degree, which is very inconvenient and quite unnecessary. As the remedy for this evil is so easy and obvious, and the encreased efficiency of the Magistracy to be derived from it is of such importance, we trust that the forms of proceeding have been carefully revised with the view of rendering them as simple and free from superfluity as may be practicable."

2. The simplification of Police and Magisterial proceedings alluded to by the Hon'ble Court, has been promoted to a certain extent by the instructions contained in the Sudder Court's Circular No. 13 of the 16th June, 1843. Much, however, remains to be done: and His Excellency is not inclined to think, that any such simplification as is desirable can be brought about, so long as the present cumbrous system of record and appeal is permitted in every trifling case, and that in most of the business of a Magistrate's Office in this country, a more summary mode of procedure would be far preferable, and better suited to the habits and expectations of the people, than the harassing delay now caused by vain attempts at an over-refined and systematic administration of justice, which, if not in all cases that come before a Magistrate in this country, yet surely in

the petty assaults and larcenies, and trifling misdemeanours, which make up the bulk of Police cases, seems to be altogether out of place.

3. The Act for regulating Criminal Appeals is now understood to be under the revision of the Supreme Government. The opportunity is therefore favorable for a full consideration of the system; and His Excellency desires to have the assistance of the Sudder Court in laying before the Legislature such a plan for improvement, as while it gets rid of the objectionable multitude of appeals permitted by the existing laws, will yet leave sufficient means of control for practical purposes, and will ensure as fair and as prompt an administration of Criminal Justice, as is to be expected in the present circumstances of the country.

4. As a general rule, His Excellency would be disposed to abrogate all appeals on matters of evidence and fact, of which in general the Court of First Instance, having the parties before it, is commonly better able to judge than any Court of Appeal which sees only the record of the case; leaving a full liberty of appeal on questions of law. These questions would be required to be fully set forth in the application for appeal; and if such applications were accompanied, as they ought to be in each case, by a copy of the order appealed against, the appeal might ordinarily admit of immediate decision by the Appellate Court, without calling for the record.

5. His Excellency would still leave to every superior Court the power of calling for and inspecting and reporting on the proceedings of its subordinates, without, however, altering the decisions passed by the latter. Indeed His Excellency would insist upon this mode of superintendance, and enforce it with strictness, as being in his judgment superior for its object to the present system of appeal.

6. If it were found practicable to adopt the plan thus indicated, the subordinate Courts would cease to record cases tried before them in the detailed manner now in use. But each would keep a book, in which the presiding functionary would enter in his own language and hand-writing, a sufficient memorandum of the cases tried, of the evidence, and of his reasons for decision. This book would be a record of the Court: would be constantly open to the inspection of

the superior functionary; and by the precision and regularity with which it was kept, would afford good evidence of the diligence and efficiency of the officers whose labors it recorded.

7. Unless some such amendment as this be attempted, it seems to His Excellency impossible to introduce such a reform into the Police and Criminal Administration as is desirable. The Hon'ble Court have approved the recommendation of the Police Committee of 1838, that the Deputy Magistrates, when sufficiently qualified by service at the Sudder Stations under the eyes of the Magistrates, shall be located in the interior and placed each in charge of a circle of Thannahs under the Magistrate's superintendence; and this measure His Excellency is about to carry into effect. It cannot be doubted from the effects of former experience, that to each of the Deputies thus posted, there will come a much larger number of cases to be investigated from within the limits of his jurisdiction than ever came to the distant Magistrate from the same jurisdiction. Thus there would seem to promise from the introduction of this plan a large degree of relief to the Magistrates, and of increased comfort and facility to the people. But the relief to the Magistrate will be merely nominal, and the comfort of the people very imperfectly promoted, if an appeal should lie from every case decided by the local functionary to the Magistrate at the distant Sudder Station: and it might happen, that the time of the Magistrates would be taken up by appeals from their numerous subordinates, even more than by their present duties.

8. The manner in which the time of the Courts is now occupied by appeals is notorious. It is illustrated very distinctly by the Court's last Return of the Administration of Criminal Justice for 1843. In that Return it will be found that in the Sudder Court itself the number of criminal cases before it, on appeal, was only 47 short of being equal to the number of regular trials referred to the Court under the ordinary regulations, the numbers being:—

Of regular trials, ...	278
Of appeals, ...	231

The number of regular trials held by the Sessions Judges is not given in the Return, but the number of persons tried was 4,270, supposing an average of 2 persons tried in each case, the number of cases tried would be 2,135. While the number of appeal cases for hearing before the same functionaries was 4,924; or more than double the number of ordinary trials.

9. The number of appeals tried by Magistrates is not given, but if it bore anything like the above proportion to the trials of first instance, the number must be enormous.*

10. There would appear then in the present circumstances of the country to be but a choice between two methods of administration. The one is that at present pursued, of taking great pains in selection of functionaries; giving them jurisdiction over immense tracts of country, and vast numbers of people; paying them highly, and scarcely trusting them at all without a constant system of appeal.

11. The other is that of an equally careful selection and equally adequate remuneration of functionaries; but their numbers greater, the extent of their local jurisdiction smaller, and a confidence reposed in them equal to the importance of their positions and accommodated to the habits and manners of the people over whom they are placed, while at the same time such a general supervision is established as cannot fail to bring to light any abuse of the confidence bestowed.

12. The former system aims at, but does not accomplish, exact justice in every case. At the same time it causes great delay, and through delay, hardship to the people.

13. The other plan would effect prompt dispatch of business, and would remedy those great evils which now arise to prosecutors, witnesses and defendants from delay, and to the people at large from the denial of justice. There would be risk of occasional haste, and now and then of injustice. But if the functionaries were well selected

* The proportion of appeals in the Sudder Court is understood to be increasing. In the Monthly Return for December 1844, the numbers were :

Of Appeals, ...	52
Of Regular Trials,.....	23
Difference for one month,	29

and overlooked, there would be likely to be in the main an administration of substantial justice; and the defects of this system in regard to occasional failure of justice would be more than counterbalanced by the vigour and promptitude of the administration, and by the absence of that almost intolerable harassment from delay, of which such frequent cases are now known to occur. Injustice by corruption is a contingency common to both systems. It may occur under either. It is never prevented, and rarely detected by means of the plan of appeals. The only remedy for it seems to be very careful selection of functionaries, sufficient salaries, and effectual supervision by superior authorities in aid of public observation.

14. With the absence of encumbering records, which under the proposed plan would be no longer necessary, there would disappear the crowd of underpaid, overworked, and greedy Mohurrirs, who now infest our Courts, occasioning large expense to Government, and never failing to add by their exactions to the corruption of justice and the impoverishment of the people. The sums which might thus be saved are probably considerable. They would be applicable in the first instance to the very important object of raising to an adequate amount, the salaries of the really necessary Amlah of the Courts, and in particular of the Serishtadars, a set of officials at present very inadequately salaried. The remainder would be in aid of the general improvement of the administration of justice, in which for want of funds, obvious reforms are now but too often allowed to stand aside.

15. Such are His Excellency's present opinions: but he is desirous, before submitting them to the proper quarter, to avail himself of the experience of the judicial authorities here and in the Mofussil. With this view, I am directed to request, that the Court will address Circulars to the Session Judges and Magistrates subordinate to them, earnestly inviting them to consider the subject attentively, and to report upon it at an early date.

16. These replies, when received, should be forwarded with the Court's remarks, and the Draft of a Law for the enactment of such alteration in the present system of appeal and procedure, as the

Court, with their own experience, and that of the Lower Courts to guide them, may deem advisable.

I have, &c.,

FRED. JAS. HALLIDAY,

Secy. to the Govt. of Bengal.

No. 691.

TO OFFICIATING REGISTER, SUDDER COURT.

FORT WILLIAM, *the 23d April*, 1845.

SIR,

Judicial. I am directed by the Right Hon'ble the Governor of Bengal to forward the accompanying copy of a Dispatch from the Hon'ble the Court of Directors in the Judicial Department, No. 1, dated the 22d January, 1845, on the subject of the administration of Criminal Justice in the Regulation and Extra-Regulation Provinces, for the year 1842, and to request that you will draw the Sudder Court's special attention to paras. 4 and 5 of that Dispatch, regarding sentences of lengthened imprisonment and the *right* of appeal by convicts.

2. The latter question has formed the subject of a recent correspondence between this Office and the Sudder Court, and with the Supreme Government, before whom the proper construction of the law is now under consideration. But the Court are aware that apart from the question of *right*, the expediency or otherwise of continuing the present system of appeal in all criminal cases, has still more recently engaged the attention of this Government. When submitting, therefore, the opinions called for in the Secretary's letter, No. 319 of the 19th February last, the Sudder Court will be pleased to bear in mind the remarks of the Hon'ble the Court of Directors on the subject.

3. An Extract (para. 13) from the previous Dispatch referred to by the Hon'ble Court, is also annexed.

I have, &c.,

A. TURNBULL,

Under Secy. to the Govt. of Bengal.

Extract of a Letter from the Hon'ble the Court of Directors in the Judicial Department, under date the 22d January, 1845, No. 1.

4. The lengthened terms of imprisonment are still such as cannot in our judgment be necessary for the purpose of example, and are objectionable in every other view of the subject. We refer you to the observations to the same effect conveyed to you in our Dispatch of the 28th September, 1842, No. 12.

5. We observe that in no fewer than 460 cases, the sentences of Commissioners and Sessions Judges have been called up for review by the Nizamut Adawlut, and those of Magistrates and inferior Officers in no fewer than 4,318 cases by Sessions Judges. This forms a large proportion of criminal cases to be tried a second time. You are aware of our opinion that, while it is necessary that a vigilant superintendence should be exercised over subordinate tribunals, with the view of preventing them from falling into error, and of preserving uniformity and regularity of proceeding, an *absolute right of appeal* cannot be allowed to convicts, without its leading to unavoidable abuse. We trust that under the instructions with which we have furnished you, the law, in this respect, may undergo some useful modification.

(True Extract,)

A. TURNBULL,

Under Secy. to the Govt. of Bengal.

No. 1167.

FROM THE REGISTER OF THE NIZAMUT ADAWLUT,

TO F. J. HALLIDAY, ESQ.,

Secretary to the Government of Bengal.

FORT WILLIAM, *the 8th October*, 1847.

SIR,

NIZAMUT ADAWLUT.
Present:
R. H. Rattray,
C. Tucker, and
A. Dick, Esqrs., and
Sir R. Barlow, Bart.,
Judges, and
W B. Jackson, and
J. Hawkins, Esqrs.,
Temporary Judges.

I am directed by the Court to acknowledge the receipt of your letter, No. 319, dated the 19th February, and of Mr. Under Secretary Turnbull's, No. 691, dated 23d April, 1845.

2. The points embraced in these are threefold:—

First.—The abrogation of appeals in criminal cases.

Secondly.—The simplification of Police and Magisterial Proceedings.

Thirdly.—The reduction of periods of imprisonment on conviction of criminal offences.

3. The Judges of the Court have separately recorded their sentiments on them in minutes, copies of which accompany.

4. As regards the first subject, the Court remark that Magistrates have had very little to do with appeals since the enactment of Act XXXI. 1841; and that this is the case, is apparent from the following Circular Orders, 7th January, 1842, (No. 100,) 9th February, 1844, (No. 156,) 25th July, 1845, (No. 16.) These shew that Magistrates, or other Officers exercising the powers of such, cannot hear appeals from their subordinates, whether covenanted or not, and whether with or without special powers, unless the punishments awarded, be within the limitations expressed in Section 2, Act XXXI. of 1841. In all other cases, the appeals must be preferred to the Session Judges, who are the Officers most affected by the existing system of appeal, which, it may be added, entails little or no hardship upon parties, for they are not required to attend in the Appellate Court, only the papers of the case are sent there.

5. The chief modification of the law of appeal, which is proposed, is, that the liberty of appeal, *of right*, should be taken away. Further, cases under Act IV. 1840, and others in which the decisions are open to be contested in civil suits, should not be appealable except as to the relevancy of the law to the particular matter at issue. In cases too where the order of the Lower Court is conclusive by law, it should nevertheless be legal, to be respected by the Superior Court. On this account the power formerly vested in the Nizamut Adawlut by Section 24, Regulation IX. 1807, should be restored to it, both as regards criminal trials and miscellaneous proceedings.

6. The Court would maintain the system of appeal modified as above; because even if comparatively few of the convictions of the Lower Courts be reversed, the necessity is still shewn of allowing an appeal to insure a fair administration of justice. This will not be gained by allowing them only on points of law; for there are few such in connection with criminal trials. Failure of justice principally arises from conviction on insufficient evidence, or excessive punishment upon right conviction.

7. The question of simplifying proceedings, so much depends upon what may be decided regarding appeals, that until the law be known respecting them, no determination can well be come to upon it. Evidence need not be recorded in cases not appealable; but, if appeals be allowed, it must be recorded, or it must be repeated *viva voce* before the Appellate Court. A copy of the roobookaree drawn up as now, i. e. according to the Circular Order, dated 16th June, 1843, will not suffice to shew whether the decision is right or wrong. It is too concise, and refers altogether to the contents of the evidence, as affording the necessary details.

8. The Court would, however, gladly see the proceedings of the Police considerably curtailed. The reports of the Darogah should be dispensed with; nor should inquests be held by them except in offences of a heinous nature; or in cases of violent death. They should not be permitted to record any depositions of witnesses, which should first be taken by the Magistrate; nor would Messrs. Dick

and Jackson allow them to put any questions by way of cross-examination to the accused. They should merely report the nature of the case, the names of the parties sent in, and the purpose of sending them. Their opinion should in no instance be recorded.

9. As to the reduction of periods of imprisonment on conviction of criminal offences, the Court generally think that they are not excessive under present circumstances. The results of Regulation II. of 1834, have been but slightly remedied by Act III. 1844; and the consequence is, that many prisoners are detained in jail, who, if flogging were legalised, as before, would be discharged after shorter terms of imprisonment. The Court are also of opinion, that transportation might form part of all punishments in which sentences of imprisonment beyond seven years are awarded. This would be a re-enactment of the law, (Section 10, Regulation IV. of 1797,) which was rescinded by Section 8, Regulation LIII. of 1803.

10. The replies of the Magistrates and Session Judges, which were required by paragraph 16 of the letter No. 319, are herewith submitted, but the Court abstain from forwarding the Draft of a Law. At present they consider it would be premature, without their knowing the intentions of Government on the subject. The discussions have not yet reached the stage at which a Draft Act can be deliberated upon; but the Court will be prepared to submit one, when favored with the views of Government on the questions now referred to.

I have the honor to be,
Sir,
Your most obedient Servant,
B. J. COLVIN,
Register.

(Copy.)

Minute of Mr. R. H. Rattray on the letter of the Secretary to the Government of Bengal, dated February 19, 1845.

I find what I had written in regard to this matter, to correspond so entirely in the conclusions and opinions arrived at on the different points to be considered, with what Mr. Tucker has recorded, as to render a distinct minute superfluous.

There is one particular branch of the subject, however, on which I would add a few observations: The increase of prisoners, and lengthened terms of imprisonment under the operation of Regulation II. of 1834, must have been anticipated by every one, who bestowed a thought upon the tendency of that enactment. The Honorable Court are of opinion, that the result has not realised the humane intention which suggested it; that increased exposure to contamination, in the instances more especially of youthful offenders, danger to petty delinquents from jail disease, and the production of that disease, from the crowded state of the jails, are the consequences. Is there not another evil,—of surpassing magnitude, even as compared with these? What becomes of the wives and daughters, and sons, where daily labor subsists them all, when the 'bread-winner' of the family is hurried away to the district jail? I think the true answer is one and the same with universal application through the jurisdiction of every Magistrate in the country: that, in instances of short detention, not exceeding a few weeks, hunger and misery are experienced only for the time; but where the bereavement is for a lengthened period, the resources against destitution and starvation, are prostitution on the part of the females; and, at first pilfering, and by degrees open robbery and villany in any of its phases that opportunity may invite to, on that of the males. *Hence*, above all other sources, the crowded state of our jails. Act III. of 1844 has done something, but very little, in the way of remedy.

I am not an advocate for tearing the flesh off the backs of men, however obnoxious to punishment; but even *that* was mercy compared with the well intended, but cruel law which consigned whole

masses of unoffending beings to destruction to save one offender from a whipping. Surely ingenuity might devise some instrument with which corporal chastisement might be inflicted without the risk of those abuses, which have been urged against the use of the lash: and this, I would submit, is more worthy of consideration, with a view to its adoption, than any change of locality or reduction in the period of imprisonment. The latter is not required, on any ground that I have yet discovered; and the mere abstract reasoning on the subject, of which I have heard and read so much, has only confirmed the opinion, that, on this point no modification of the existing practice is advisable.

Transportation might be justly and perhaps advantageously adopted in cases of sentence exceeding, say five or seven years, provided the prisoner's return were guaranteed at the end of the period to which the sentence extended: but this proviso, with a suitable arrangement for its fulfilment, would involve a large and continuous expenditure, greater or less, as the prisoner's home, to which he would have to be restored, might be distant from the place to which his sentence had consigned him. If this were not a part of the plan, it were better to keep him, as now, to repair the roads of his own district: for to liberate him, 'a discharged convict,' where he had been known only as a banished malefactor, were to leave him no alternative but to offend again, if only to obtain the jail allowance, which liberty had deprived him of.

After all the attention that has been given to the subject of jail economy and jail discipline, I don't think much practical benefit has followed here, to any party concerned. My own opinion is, that a large proportion of the inmates of our jail should never have been there; and that, were such withheld from the contamination which meets them at their entrance, and goes forth with them, like the plague, to infect all with whom they come in contact, the number of those who deserve to be there would at once diminish. That more rogues are made than are cured by the system now pursued, none will deny; and the hot-bed of this result is kept at its full forcing power, within the walls of every prison. The young and offending

but not habitually vicious, are consigned to them for acts, for which a dozen ratans were an ample penalty; and they go forth to rejoin their famished families, corrupted and adepts in villanies, which, till that infection was imbibed, they had never dreamt of.

(Signed) R. H. RATTRAY.

(True Copy,)

B. J. COLVIN,
Register.

(Copy.)

Minute of Mr. C. Tucker on the letter of the Secretary to the Government of Bengal, dated February 19, 1845.

The correspondence before us involves two questions for consideration:

1st. Whether the preliminary proceedings of the Police Officers and Criminal Judges may not be simplified and curtailed.

2dly. Whether all appeals on the criminal side of the Court should not cease to be admitted, except on questions of law.

The questions are intimately connected. It is stated in Mr. Secretary Halliday's letter, No. 319 of the 19th February, 1845, that though much has already been done on the first point, yet much more might be done, but for the cumbrous system of record and appeal, which stands in the way of that complete reform which is desirable.

The right of appeal, therefore, seems to involve the necessity of that system of record which now prevails; and hence we may save ourselves much trouble by considering the second question first; for on the extent to which it may be deemed advisable to modify the existing law of appeal, will depend the degree of reform attainable in the system of record. After the best consideration which I can give to the subject, I am not prepared to go to the full extent suggested in Mr. Secretary Halliday's letter, viz., the utter disallowance of appeals except on points of law, with power to every superior Court

to call for, inspect, and report on the proceedings of its subordinates, without, however, altering the decisions passed by the latter.

It is an error to suppose that the system of appeal in criminal cases is unknown to the law of England. It may not be taken advantage of to the same extent as in this country, but that it is allowed and is in practice, is, I believe indisputable. When I consider the early age at which many of our criminal functionaries are vested with great powers, the entire absence of a previous legal education, the amount of business they have to perform, and that in a language but partially and imperfectly understood by them, I cannot bring my mind to support any plan which has for its object, the abolition of appeals in criminal trials.

No doubt the result of such a measure would be to relieve some of the authorities of much of their present amount of labor, and to afford more time for consideration and deliberation on general measures of Police and the prevention of crime; but I question if this be not overrated; and whether in the minds of the people concerned, the due administration of criminal justice, the rectifying of unjust or partial sentences, whether arising from ignorance or design, be not of infinitely greater importance than the concoction of the most theoretically perfect system of Police, but which fails to interpose between them and what they consider an unjust condemnation, perhaps for life. Matters are not now as they were thirty years ago. Formerly the Police of the country was a kind of joint concern, in which the Magistrate, the Court of Circuit, the Nizamut Adawlut, were all employed. It might then have been an object of much importance to prevent these several authorities being burthened with matters of trifling detail in the executive branch of their duties. But how stands the question now? The Sessions Judges, who have taken the place of the Courts of Circuit and the Nizamut Adawlut have nothing to do with the Police: their duties are confined to the administration of criminal justice, of which appeals from a subordinate to a higher tribunal seem to be a legitimate object, whilst the business connected with the Police of the country is now concentrated in one officer, the Superintendent of Police, with the assistance of the several

Magistrates. Now, to what extent are the Magistrates employed in hearing appeals—very little indeed, and only in the most trifling cases. Therefore I have said that the question of time saved to those who might be more profitably employed were appeals disallowed may be overrated. But this will not apply to Sessions Judges and the Judges of the Nizamut Adawlut, who have also civil duties to perform, and which are frequently much obstructed by the weight of their criminal duties, though not altogether by appeals. This may be in a great degree avoided by a modification of the existing law. I am quite prepared to concur with those who advocate the abolition of the *right* to appeal, by which I understand not merely the admission of the petition of appeal and passing an order thereon, but that every person sentenced to punishment is entitled on appeal to have the proceedings in his case called for and thoroughly revised. It is matter of surprise to me, that, under the existing law, every sentence passed is not appealed, a man cannot suffer by appealing, the chances are rather in his favor that he may be a gainer. But experience shows that advantage has not been taken of this state of the law, and that appeals are not materially greater in number now in proportion to the number of trials, than they were previous to the enactment of Act XXXI. of 1841. But still advantage may be taken of the law, and the apprehensions of the Hon'ble the Court of Directors that the criminal business of the country will have to be done twice over, may be realized; and therefore I think a law liable to such abuse should be modified. We have had examples of the most absurd appeals to our Court. I think Mr. Rattray told me of a case he had before him in which the prisoner appealing had confessed his guilt through every stage of the trial, from the Mofussil enquiry to the Sessions Court. Even in such a case as this, the Court had to wade through the proceedings.

I would therefore disallow the *right* of appeal, and leave it discretionary with the Appellate Court either to call for the proceedings held on the trial and revise them, or to reject the petition at once, if sufficient grounds were not shown for a more minute consideration of the case, but with the same proviso as at present, that no order unfavorable to the prisoner shall be passed in appeal. The power which

the Government would give on the positive abolition of appeals, to every superior Court to call for, inspect, and report on the proceedings of its subordinates, but not to alter the decision passed, I consider objectionable—first, as falling far short of what justice may frequently require; and, secondly, because I think it objectionable in principle that Government should mix itself up so much with the details of the administration of justice, and as it were setting the constituted Courts aside, taking it into their own hands to do in another form that which ought to be done by the Courts in the ordinary course of their duty on judicial considerations alone. The Courts would of course always have the power of reporting on the conduct of a subordinate on any flagrant case of injustice; but for a Court to be obliged to do so on every case of irregularity brought to its notice, seems to be unnecessary, and to deprive the Appellate Court of that influence it should maintain over its subordinates. Though I am averse to restrict the liberty of appeal, as modified by the foregoing observations, in criminal trials, I am of opinion that in many cases of proceedings other than criminal trials, it may be very properly prohibited. In every case, in which the order of a Criminal Court is subject to revision on the institution of a regular suit in the Civil Court, I would permit no appeal from the Magistrate's order except as to the relevancy of the case to the law applied to it. This would be a great relief to the Sessions Judges, many of whom are burthened with appeals from orders passed by Magistrates under the provisions of Act IV. of 1840.

The foregoing remarks refer almost exclusively to criminal trials. But I think this is a fitting opportunity to say something on the question of the right which this Court ought to possess as the chief controlling and supervising authority over all the subordinate Courts in every case, miscellaneous as well as regular trials, to see that justice is legally administered. The Court had this power originally, and it seems inherent in the highest judicial tribunal. I am not desirous of advocating second appeals on matters of fact or evidence, but it seems almost paradoxical that the subordinate Courts may pass undeniably illegal orders, and yet there is no authority in the country

to set them right and make them pass a legal order. In support of my assertion, that this Court did, as originally constituted, possess such power, I would merely cite Section 24, Regulation IX. 1807, which authorizes the Nizamut Adawlut to call for the proceedings of any Court of Circuit or of any Zillah or City Magistrate, or Assistant to a Magistrate, whenever it may appear requisite, and to pass such orders thereon as that Court may deem just and proper. This power has been withdrawn as to miscellaneous cases by Section 3, Regulation IX. 1831, by Section 6, Regulation XXIV. 1837, and finally by Act XXXI. of 1841; and what is the consequence? In such parts of the country, wherein Section 3, Regulation IX. 1831, is still in force, the Governor General in Council is constituted a Court of Appeal, as it were, with authority to pass orders consistent with the regulations in such cases as may be referred to him; and where it is not in force, there is positively no authority to cancel an illegal order passed by any of the subordinate Courts. I submit this is a state of things which should not be permitted to continue. The Government should leave the administration of justice in the ordinary Courts. I repeat that I contend merely for the exercise by this Court of the power of keeping the lower Courts to the law, when it finds they have in their proceedings infringed it. We have recently had a flagrant instance of this before us, but had no power to give redress. I submit this is to make the Court despised in the eyes of the public, who are led to look up to it for protection. Briefly to re-capitulate, I would modify Act XXXI. 1841, by abolishing the right of appeal, leaving it discretionary with the Appellate Courts to call for and revise the proceedings of their subordinates when deemed necessary.

I would extend Section 3 to miscellaneous cases to the extent of declaring the Court competent to annul the order passed in any such case, when such order may be in opposition to any law or regulation in force, and to require the officer to pass a new sentence according to law. Finally, I would re-enact Section 5, Regulation IX. 1831, which it has been ruled is virtually rescinded by this Act XXXI. of 1841.

As I am opposed to the total abolition of appeals, I have not much to say on the question of the system of recording proceedings in the Criminal Courts. I do not think they should be curtailed in the subordinate Courts, but I am decidedly of opinion the great bulk of the proceedings of the officers of Police in their preliminary enquiries may most beneficially be reduced. I would at once abolish the "reports" of cases submitted by Darogahs to the Magistrates, in lieu of which a form something similar to the Magistrate's calendar of commitment to the Sessions Court should be substituted, in which the prosecutor and prisoner's names and the charge against the latter should be entered, and in subsequent columns the names of the witnesses classed as the case may be. The last column should contain as brief a statement as possible of the nature of the case. I would not allow the Darogah to record a single deposition except that of the prosecutor; he should question the witnesses verbally, and class them in his calendar according to the points they are able to depose to. In like manner, the prisoners should merely be asked whether they are guilty or innocent of the offence charged, and the single reply guilty or not guilty recorded. This would facilitate and expedite the proceedings of the Police most considerably, and obviate all pretences of keeping parties in the Mofussil and subjecting them to all kinds of annoyance and oppression; and I am quite confident that in the great majority of cases the proceedings would be infinitely more satisfactory. The Darogah would be deprived of the power of putting into the mouths of the witnesses whatever might suit his purpose. Many a true case has been lost by the utter confusion purposely thrown into the proceedings of these preliminary enquiries, which are so conducted frequently as to bewilder the Magistrate, and to obscure rather than throw light on the case. Witnesses compelled through fear to say what they do not mean, retract when they come before the Magistrate, and a suspicion thenceforward rests on their evidence, which it is impossible to clear up.

The first written evidence should be taken by the Magistrate, and the Police officer's written proceedings reduced to the lowest practicable limit. This would entail no additional labor on the Magis-

trate, for at present he takes down the evidence *de novo* of every person sent in—prosecutor, prisoner, and witness. No man who has not had occular demonstration of the extent of a Darogah's nuthee on a charge of dacoitee or burglary or affray, can estimate the saving in time and trouble which the adoption of this plan is calculated to ensure.

We have already submitted our opinion to Government on the subject of shortened periods of imprisonment, and of transportation in sentences of imprisonment short of life. With regard to the first question, however, it was opposed by the Court, because it was contended that the improvement in prison discipline rendered some such measure necessary.

We did not agree in the principle, and therefore we objected to the measure, leaving the question open to discussion on general principles, should the Government see fit to revive it.

The Hon'ble the Court of Directors seem to wish it to be considered in this light; but it is not a question that can be fairly considered in the narrow compass usually assigned to an official minute, nor can the question be considered for any useful purpose unless taken in detail. Each offence, or at least each class of offences, with the punishment attached to it, should be separately and distinctly considered. It is quite out of my power to enter into this detail; nor would it seem to be necessary, as the subject has been fully considered and the quantum of punishment awarded to each separate class of criminal acts in the Criminal Code prepared by the Law Commissioners.

I do not think the sentences which the Magistrates and subordinate officers are authorized to pass can be considered as out of proportion to the offences cognizable by them respectively. If the same offences come occasionally before the superior Courts, it is either from a repetition of the offence, or from some aggravation in the circumstances attending the commission of it. In original offences, that is, offences which it is not competent to a Magistrate to punish on conviction, the extent to which a Sessions Judge can sentence to imprisonment is seven years in some, fourteen in others.

In the former class are affrays attended with homicide, wounding or severe beating—homicide not amounting to wilful murder—maiming or wounding—going forth in a gang for the purpose of committing robbery—embezzlement of public money—perjury, forgery, or subornation thereof—fraudulently issuing and publishing fabricated deeds and papers—using, issuing, selling, or disposing of counterfeit stamp paper—paying or tendering for payment counterfeit coin—bank-notes, or other securities for money, knowing the same to be fabricated or counterfeited—clipping, filing, drilling, defacing, or debasing the coin of Government. Now these are heinous offences, and I would not say as a maximum punishment that seven years' imprisonment was excessive. A wise discretion is exercised in apportioning the punishment to the offence in each case within the limits prescribed.

A sentence of fourteen years' imprisonment by the Sessions Court is permitted in cases of robbery by open violence, burglary or theft, attended with wounding or other corporal injury not endangering life, and in some cases, wounding with intent to kill; counterfeiting the coin of the Government; forging stamp paper or notes or other public securities, knowingly receiving property obtained in robbery by open violence or burglary or theft attended with aggravating circumstances.

These are all cases of a most heinous nature, and if any exception be made, it should be in some cases of simple burglary, such as the amount stolen exceeding the sum of one hundred rupees, of burglary not attended with these aggravating circumstances.

The amount value of the property stolen seems to me of no consequence. It is quite a matter of chance. The robber will take what he can get. The Magistrate can punish for simple burglary under one hundred Rupees with two years' imprisonment; turn the corner and the prisoner is at once obnoxious to a sentence of 14 years.

With this exception I see no just grounds for interfering with the sentences the Sessions Judges are empowered to pass.

The lengthened sentences passed by the Nizamut Adawlut, by which I mean sentences of imprisonment exceeding fourteen years, are

for the most part in capital offences; either wilful murder, robbery by open violence, burglary, theft attended with murder or wounding endangering life, and in such cases I do not see how the discretion of the Court can be judiciously curtailed. On the whole, therefore, I do not see that the maximum of punishment should be lessened. It is not perhaps in one case in fifty that the maximum punishment is awarded by the respective Courts; but cases do occur in each class of crime in which it is justly due, and if the maximum were diminished, there would be an increased number of cases referable to the Nizamut Adawlut, which it has been the object of the Legislature of late years to prevent.

With regard to transportation, I am of opinion, that it may be beneficially introduced in all cases of robbery by open violence in gangs—burglary, highway robbery, and the like, in which the sentence may be not less than seven years. I suggested five, on a previous occasion; but on consideration I would not transport under a sentence of seven years. I think the experiment may be tried, and that it will have a good effect; our jails are by far too comfortable for this description of prisoners. In point of food, raiment, dwelling and labor, they are far better off in jail than in their own houses, and their communication with their families and friends is nearly unrestricted. Tranportation would greatly facilitate the breaking up of gangs. I would therefore try the experiment.

(Signed) C. TUCKER.

(True Copy,)

B. J. COLVIN,
Register.

(Copy.)

Minute of Mr. Aber. Dick, on the letter of the Secretary to the Government of Bengal, dated February 19, 1845.

We are called upon by the Right Hon'ble the Governor of Bengal to assist ' in laying before the Legislature such a plan for improvement as, while it gets rid of the objectional multitude of appeals per-

mitted by the existing laws, will yet leave sufficient means of control for practical purposes, and will ensure as fair and as prompt administration of criminal justice as is to be expected in the present circumstances of the country.'

1. If the right of appeal be disallowed, all objectionable appeals will be got rid of; and if the power to punish, as a contempt of Court, litigious appeals be given to the Appellate Courts, they will be got rid of most thoroughly. To leave however a sufficient control for practical purposes, and insure a fair administration of Criminal justice, appeals must not be *altogether* abolished. With respect to appeals from the Magisterial authorities to the Sessions, and from the subordinates to the Magistrates, their continuance has been so forcibly to conviction, argued by the most experienced and ablest Session Judges and Magistrates; especially by Mr. Robert Torrens, Mr. Raikes, the Hon'ble Mr. Forbes, Mr. Mytton, Mr. Gilmore and Mr. C. Trevor, that a word more would be superfluous. Most of them, however, think an appeal to the Nizamut should be taken away. In this I cannot concur. A reference to the number of sentences reversed on appeal, by the Nizamut, will demonstrate the propriety of allowing the right to petition for appeal, and empowering the Court to call for and amend or reverse the decision of the Lower Court. Mr. Cheape has instanced the fact of 112 persons in 26 cases having appealed to the Nizamut, out of 179 persons in 83 cases, convicted by him in Sessions: and seven only acquitted. The number of evidently wanton appellants was caused by the supposed right to appeal, which I have above said I would do away with. But even the small number of seven acquittals, after conviction by perhaps the ablest and most experienced of the Sessions Judges, shows the necessity of allowing an appeal to insure a fair administration of justice. The notion of native litigiousness to excess, I take to be a vulgar error. The fact, so creditable to himself and the Magistrate, stated by the Hon'ble Mr. Forbes, that out of 1,188 cases, decided in the past year by the Magistrate the Hon'ble Mr. Drummond, 35 only were appealed, speaks volumes on the point, for the inhabitants of Behar are not a timorous race, who would be

withheld from appealing by dread of the Magisterial power. Prompt justice would be attained by enforcing a full statement of the evidence on which sentence of conviction is passed, to be recorded; and making incumbent on the appellant to file a copy of the record of sentence, and copies of any depositions on which he may rely with his petition of appeal, the Appellate Court could then at once reject the appeal, or call for the case. Appeals from Magistrate's decisions, under Act IV. 1840, should, of course, be disallowed, except on points of law.

2. On the subject of simplification and curtailment of records and proceedings, I would suggest that Darogahs and other Police officers be precluded from instituting any previous enquiry or taking depositions, or questioning the accused, except as to any witnesses he may wish to name. On receipt of a complaint or charge, they should swear the prosecutor to its truth, apprehend the accused, summon the witnesses named for the prosecution, and for the prisoner, and hold them to bail, or forward them at once to the Magistrate, as the case may require. They will of course make an inquest in case of burglary, robbery, or death, and forward property, implements of injury, &c. They should not, however, be allowed to put a single question to the accused, not even of guilty or not guilty. The case and the parties would then speedily be before the Magistrate, who should forthwith hold a summary investigation, such as a Justice of the Peace does before committal: and if the case requires committal, commit and forward without delay to the Sessions. There the case would be tried at once and prompt justice administered; and a vast quantity of useless record avoided; much time saved of the Courts, and to the parties and witnesses incalculable annoyance and loss obviated. There would be no extortion of confessions, no tampering; or at least comparatively none, with witnesses; and if the Magistrate's preliminary inquiry were tolerably full; that is, the examination of the accused and the depositions of the witnesses recorded in detail, so as to enable the Judge at the trial to compare and test their consistency; and, in like manner, the Sudder Nizamut, should the case eventually come before them,—all that fair justice

can demand would be insured. In cases not appealable, the Memorandum book, noticed in the Secretary's letter, could be substituted in lieu of detailed proceedings with good effect; though I suspect compendious proceedings, recorded in the vernacular, would be more satisfactory to the parties concerned, and occupy even less time. On the subject of records, Messrs. Wyatt and Hathorn have some excellent observations. It has been truly observed by several of the Judges and Magistrates, that a supervision without the power of altering or reversing the decision will be a nullity; for the natives,—aye all mankind,—are too apathetic to appeal without a personal motive, and without such assistance, incalculable time and trouble must be expended to supervise thoroughly and justly.

I entirely concur with the Hon'ble Court, that lengthened terms of imprisonment are not necessary for example; and are objectionable in every other view of the subject. They may therefore be curtailed as much as possible; but the reduced term must be made as distasteful as can be, by strict discipline, constant labour, and food only sufficient for health. And the sentences of imprisonment should in suitable cases be accompanied with whipping, smartingly painful, and yet in no way injurious. There are three things which a native of Bengal dreads even more, aye far more, than loss of life, pain, hunger and labor. Mr. Rattray has ably and forcibly demonstrated the cruel and extensive evils brought upon the community by the abolition of flogging and the substitution of imprisonment for every petty offence. Transportation may, I think, be superadded to most sentences of seven years' imprisonment and upwards, with the best effects, provided the convict be restored to his country on expiration of his sentence.

(Signed) ABER. DICK.

September 24, 1847.

(True Copy,)

B. J. COLVIN,

Register.

(Copy.)

Minute regarding Appeals in Criminal Cases, and the proposal for shortening the terms of Imprisonment for Crime.

Appeals cannot be entirely dispensed with, unless we can find Juries on whom we can rely for matters of fact; such Juries are not to be found at present in India. The native mind is so prone to follow any but the direct road, so incapable of giving a fair unbiassed opinion in the case as it stands, that we cannot trust to Juries. It is not without difficulty that we find educated men capable and fit for the office of native judge; and even with them we cannot dispense with appeals. To find a large body of men fit to be entrusted with the irresponsible office of Jurors throughout the country is at present impossible.

2. But though we cannot dispense with appeals altogether, we may avoid unnecessary appeals. At present an appeal of right is allowed, and the trial of the appeal is rather of the nature of a total revision of the case than a re-consideration of particular points. However unfounded may be the appeal on the shewing of the appellant, still the whole case is gone through from beginning to end in the Appeal Court.

3. I look on this as waste of time, and consider the practice not only calculated to do no good, but as absolutely prejudicial; inasmuch as it leads offenders to suppose that there is always a chance of the decision of first instance being modified or reversed, I would therefore allow no appeals of right whatever; but would permit each Court or authority, on petition, to call for and inspect the proceedings of the authority of the next lower grade, and to modify or reverse the order; provided, that no alteration should be made to the prejudice of the convict.

4. The appeal should for the present be allowed either on points of law or of fact. When we can get competent Juries, all appeals on points of fact should be discontinued.

5. The written record of trials cannot be dispensed with, while there is an appeal; but there is much writing now used which is rather productive of evil than good. The Police officers should not

be allowed to take down in writing any deposition or confession whatever. There should be no record of the proceedings of the Police except the report of the Darogah or his *locum tenens*. After a quarter of a century's experience in these matters, I place little or no confidence in the depositions or confessions recorded before the Police. The confessions, even when true, are generally extorted; and the depositions are warped so as to answer the purpose the Police have in view. I do not say there are no exceptions; but they are so rare that they need scarcely be taken into consideration. I would allow the Darogah simply to send his own written report, and a tabular statement shewing the nature of the case, the names of the parties and witnesses; the witnesses to be classified in different columns according to the points they are able to speak to. There would thus be no record till the case came before the Magistrate for trial or committal to the Sessions.

6. Before the Magistrate or Deputy Magistrate the whole case must be recorded with a view to appeal. In cases eventually committed for trial at the Sessions Court, perhaps this would not be necessary; but the Magistrate seldom or never knows whether he will have to commit, or not, till he has got through the case. The safest plan therefore is to have a record of all that passes in the Magistrate's Court.

7. In cases under Act IV. 1840, regarding disputes for possession of land, &c. &c., there should be no appeal whatever from the order of the officer trying the case; but parties dissatisfied should be left to seek redress in the Civil Courts.

8. On the subject of reducing the periods of imprisonment, I would observe that the periods now assigned to the various grades of crime do not appear to me to be longer than is requisite. There is no minimum of punishment fixed by the law, and it is left to the Judge to determine the term of imprisonment with reference to the circumstances of each case, a maximum in some cases being fixed, beyond which he cannot go.

9. But it is decidedly an evil to have the Jails so full. At present each Jail contains an assemblage of the worst characters in the

district under sentence for crimes and enormities of various descriptions, whose situation is far superior to that of the hard working hired day laborers. In point of food, clothing, lodging, medical attendance when sick, the convicts are objects of envy to the honest poor; their labor too, is far less severe, and their appearance is that of persons in better condition. If they are deprived of liberty, for which the natives of Bengal constitutionally care but little, they are freed from the cares and anxieties of having to provide for themselves; in fact, the convicts of Bengal pass their time in a manner as much to the satisfaction of persons of their character, as it would be possible to devise.

10. At present no convicts are transported except for life: many of the most atrocious offenders thus remain in the jails, and have an opportunity of still further demoralizing those under sentence for minor crimes: a petty thief by this means, on leaving jail, is prepared to follow the profession of a house-breaker or dacoit.

11. The evil of crowding the jails goes on continually increasing. I understand that in some of the States of America, this has reached such a point that for want of room, they have found it necessary to pardon and release numbers of convicts every year, after they had undergone perhaps only one-half of their term of imprisonment, absolutely from motives of economy.

12. It appears to me, that no convicts should be retained in our jails, but those whose term of imprisonment is under seven years; convicts under sentence for seven years and upwards should be transported: at the end of their term they should be allowed the option of remaining free in their place of transportation, or of being brought back to Calcutta: and thence, sent to their own villages.

13. I do not think it would be necessary on this account to alter the terms of imprisonment. I look on the transportation as simply a means of safe custody; that convicts will have an objection to it is very true, and that it will increase the punishment of imprisonment; this is the very object I would keep in view. Imprisonment for crime should be a punishment, a state of suffering; the morbid commiseration of convicts has of late been carried to such an extent, as

to defeat utterly the object of the law which assigns imprisonment as a punishment for offences; it is a great mistake to suppose that imprisonment can be so managed as to become a direct source of moral improvement; every method has been tried to effect this, and, I believe, without success in every instance. The state of imprisonment for crime should be a state of suffering; there should be a sufficiency of food, clothing and lodging, of the plainest description; this is due to the man deprived of his liberty; but with regard to the further treatment of him, I consider a Government entitled to act as it thinks fit; to detain him in one place or another, to transport him, to require labor of him, provided only that at the end of his period he is restored to his village, should he desire it. The convict is to be withdrawn from society for a time, not merely because his presence in society contaminates it, but also as a punishment for his past misdeeds; during this withdrawal he has no claim but for maintenance, he has forfeited his birthright of freedom, and must be treated as a legal slave until the expiration of his sentence.

14. That the natives of India have a superstitious fear of passing the sea is rather an advantage. There is no actual suffering in transportation, and the foolish horror they entertain of it would apparently increase the severity of the punishment, without really doing so; the fear of being transported might deter from the commission of crime. But this superstition will gradually wear out; as transportation and the return of convicts transported become matters of common occurrence.

15. If the offenders of the worst description are thus withdrawn from the jails, the remainder will be more tractable; and from the diminution of their numbers, there will be no difficulty in keeping them in our jails. It appears to me however that all convicts should be kept entirely within the walls of the jail, and never be allowed to leave it on any pretence whatever; the tedious monotony of remaining always in one place is almost the only thing which renders imprisonment a punishment; this principle should be closely adhered to; and the convict's labor should be carried on entirely within the jail precincts.

16. To effect the object in view, that of relieving the jails, and, at the same time, providing a more proper and effectual punishment for crime, it will be sufficient to pass an Act declaring that all persons sentenced for criminal offences to imprisonment for seven years or upwards, shall also be sentenced to transportation. The Government might, in special cases, exercise the prerogative of mercy in favor of individuals; but this should be of very rare occurrence.

(Signed) W. JACKSON.

8th October, 1847.

(True Copy,)

B. J. COLVIN,
Register.

(Copy.)

Note on the Government Letter, No. 319, regarding Criminal Appeals, and the simplification of Police and Magisterial Proceedings.

1. I am not prepared to admit the expediency of abrogating all appeals on matters of evidence and fact, either from orders of the Magistrates or those passed by the Session Judges. In most instances the Magistrates and their Assistants are young and inexperienced officers: with every desire to do what is right, they frequently overstep the bounds of the law, and their very position cannot but give them a bias in the direction of punishment. Mixed up as they are in the prosecution of offenders, and having at the same time judicial powers in their hands, it would be too much to expect that they should always come to the trial and decision of a case altogether unprejudiced. Indeed the more zealous an officer may be in the Police department in the detection and apprehension of criminals, the more zeal will he exhibit in order to their conviction, actuated albeit by the most conscientious motives, and with the desire to bring to condign punishment persons who are, in his judgment, guilty.

2. There is a class of offences of a trifling nature now appealable from his subordinates to the Magistrate, petty assaults and the like, the final jurisdiction in which, very properly, rests with him. Such cases are hardly connected with Police matters, and no influence can

in such operate on the mind of a Magistrate. I allude to cases referred to in Section 2, Act XXXI. of 1841.

3. In cases of a nature, somewhat more serious, which usually come under the cognizance of the Magistrate in the first instance, the law, as it now exists, should be maintained; and in order to guard against hasty and improper orders founded on insufficient data, I would exact from the Session Judges the strictest supervision of the proceedings of the Lower Courts; their orders, as now, being final. How this supervision and controul are to be exercised, I propose to point out in a subsequent part of this Note.

4. In all cases of a still graver nature, the jurisdiction would of course lie with the Session Judge. The question of appeal from orders passed in the Session Court, is a more difficult one than the last. Session Judges are, for the most part, men of some years standing and of greater experience; they are moreover quite unconnected with the Police of the country. They have again the benefit of personal communication in Court with the parties sent up in cases committed: and have the opportunity of examining them all *viva voce*. These advantages give them great facility for aiming at the truth; and the result of mature deliberation would, in most cases, be sound and just sentences under the powers vested in them. My experience in this Court bears me out in saying that in the course of the numerous trials which have come before me either in appeal or by precept, I have in most of them upheld the judgments of the Session Courts, in some, perhaps, modifying the sentence. Still however the powers of the Session Judges are so extensive, and the evils arising out of wrong judgments are so great, that I would not recommend the abolition of appeals against Sessions orders. *The right* of appeal now granted (by which it is incumbent on the Court to call for the original records) is very frequently abused, and wastes the time of the Court most unnecessarily in the perusal of lengthy proceedings, perhaps confessions repeated throughout, and supported by corroborative as well as direct evidence—this right should, I think, at once be abolished. The Court, with a petition of appeal before them, and with the Statement, No. 6, of convictions submitted

by the Session Judges, have sufficient data to form an opinion as to the justice of the orders passed in the Court below, and should be empowered so to dispose of appeals. At all events they have the authority, if they see fit, to call for and revise the original proceedings when an appeal is preferred, and are thus enabled to give redress to such as are injudiciously sentenced or illegally punished. This supervision, and these checks, I am of opinion, are absolutely called for; for though as I have above stated, the orders of the Session Judges are generally upheld; still, instances in which much injustice (and that irremediable) in the absence of an appeal, would have been done on very sufficient data for conviction, have come before me: and in these few instances the necessity of revision in appeal at the cost of any time and any amount of labor was incontrovertibly established.

5. All appeals, under Act IV. of 1840, should, in my opinion, be disallowed—as, be the order of the Fouzdaree Court what it may, recourse is always had to the Civil Court for the final disposal of right of possession.

6. I shall close my remarks on the subject of appeals with one more observation. It appears to me altogether an anomaly that the highest Court in the country should be restricted from taking cognizance of any case which in the exercise of their discretion they may deem it expedient to call for and revise. The Court ought certainly to be empowered to interfere in all cases, and in all penal sentences in favor of the defendant, whenever on review of the proceedings of the subordinate Courts, their interference may seem expedient for the ends of justice.

7. As to the simplification of Police proceedings, I think that much might be done if the rules already promulgated were strictly enforced. The Circular Order, No. 13, of the 16th June, 1843, has been productive of much good in this matter, but it frequently happens that the Mofussil Police disregard the instructions therein laid down. We still receive long Sooruthals from the Darogahs; report upon report on immaterial, sometimes irrelevant points, is transmitted to the Magistrate; time and labor are thus thrown away, and the record thus swells out to a most inconvenient size; a chullan

drawn out in the annexed form is all that should be sent in by the Mofussil Police; it contains the headings of all the information which the Magistrate can require to direct him as a preliminary to his enquiries.

8. I cannot but think that a Register prepared after the form of the Calendar of Commitment and the Session Statement, No. 6, if judiciously filled up and accompanied with remarks in extenso in the prescribed column, all of which should be recorded by the Magistrate himself, would be a sufficient record in almost all cases to enable the Session Judge to check his subordinate's proceedings; a corresponding vernacular Statement must at the same time be prepared and signed by the authority presiding, and by his head officer.

This Register should always be open to revision by the Session Judge, and he should report upon it when he submits his Annual Criminal Statements. He should be empowered to modify or reverse any order passed by his subordinates, which, on consideration, he might deem improper either on a point of law or on its merits—his order being, as now, final.

9. In regard to cases to be committed to the Sessions, similar Statements should be prepared and sent up; but the proceedings in the Session Court ought to be conducted formally and recorded as at present. Much might, I am satisfied, be effected in reducing the record of trial, and much time and trouble be saved to the Courts were the Session Judges more careful in the examination of witnesses and others brought before them.

Sufficient attention is not paid to this point, and we often see most irrelevant and irregular proceedings in consequence sent up to this Court.

A record is, however, absolutely necessary; this is not inconsistent with simplification of proceedings; and in order to attain this, it is not expedient to set aside the rules now in force for the conduct of Session Trials.

10. I annex forms slightly differing from those in use, which may be adopted, if approved of, exhibiting the different headings to be filled up concisely yet fully; no doubt a little practice will ensure the object to be attained, the bulk of criminal records will be diminished, and consequently much time and labor will be saved in all the Courts.

11. On the subject of lengthened sentences of imprisonment, I have to make the following observations:

12. Under the Regulation in force and the rules of Prison Discipline now existing, I do not think the periods legally, and I may say, ordinarily awarded, are excessive. A convict, whilst he is in jail, is prevented from committing offences which he might perhaps perpetrate were he at large; and so far, the longer he is in restraint the better for the public. If, however, jail discipline were more perfect, I apprehend a shorter sentence might be passed; the jail should be made a terror to the ill-disposed, and having once undergone the rigour of it, a salutary dread from past experience would be established in the mind of the released convict. But what is the state of things at present? Doubtless many of the inmates of our jails are in a better condition than most of the cultivating ryots around them. Disgrace and moral degradation do not come within the scope of the minds of the lower classes, uneducated and ignorant, as they must necessarily be, of every principle of correct feeling. Housed, fed, as the prisoners now are, twice a day, clothed, and cared for in every way, what fear have such men of entering a jail? It may be said that the prisoner is cut off from association with his friends. I believe such is not the case; and a fee of the smallest trifle to the Burkundauz in charge, who makes a profit by such indulgences, secures to him communication with his friends, and long respite from the labor to which he is sentenced. I uphold then the periods of imprisonment now awarded, upon the principle that the convict can do no harm whilst in confinement.

13. If, however, Prison Discipline were improved, severe labor were exacted, as in the case of every ryot who works through the whole day, and privations were enforced, so that a jail were to become, what it ought to be, a place for severe and certain punishment, rather than one of ease, I am of opinion, that shorter sentences might be awarded; the State would be put to less expense; the convict would return to his family; and the experience of the past would have great weight in deterring from future offences. The prospect, however, of any reform in Prison Discipline appears to be

distant; and I would adhere to the present rules as the only means of deterring the offender, and the only preventive measure within our reach.

14. Should no reform take place in Prison Discipline, I see no better way of disposing of convicted dacoits (I allude to this class of offenders particularly) than transporting every man sentenced to seven years and upwards for that offence. Example and warning to the ill-disposed there is none; and in the absence of any other check, this, it appears to me, would be most efficacious in repressing such crimes.

(Signed) R. BARLOW.

August 5, 1847.

(True Copy,)

B. J. COLVIN,
Register.

THANAH CHULLAN.

1.	Number of the Chullan.		
2.	Names of the Prosecutor and of the offenders.		
3.	Abstract of the charge and the date on which it was preferred, or the notice of it given at the Thanah.		
4.	Witnesses to the fact.	Names of Prosecutor's Witnesses.	
	Witnesses to the apprehension.		
	Witnesses to the Sooruthal and date.		
	Witnesses to the confession in the Mofussil.		
	Witnesses to the finding and identifying of the property.		
	Circumstantial Witnesses.		
5.	Date of apprehension and forwarding the case to the Sudder Station and abstract of investigation by Police.		
6.	Names of the Prisoners held to bail.		
7.	Names of Defendants guilty or not guilty.		

MAGISTRATE'S REGISTER.

1.	2.	3.	4.	5.	6.									7.	8.	9.
Number of Case.	Number of Prisoners.	Names of the parties and the names of their Fathers.	Abstract of the charge and date on which it was preferred.	Date of the apprehension of offenders.	Names of the Prosecutor's Witnesses.									Abstract of the examination, grounds and date of commitment for trial.	Number of Prisoners held to bail.	Witnesses to Defence.
					Witnesses to the fact.	Witnesses to the apprehension.	Witnesses to the Sooruthal.	Witnesses to confession in the Mofussil.	Witnesses to confession at the Fouzdaree.	Witnesses to finding and identifying of property.	Circumstantial evidence.	Witnesses to character.				

STATEMENT No. 6.

1.	2.	3.	4.	5.	6.	7.	8.
Number of case and the month on which it was committed.	The number of the Prisoners.	Number of crime corresponding with Statement No. 1.	Names of Prisoners.	Crime charged when perpetrated, date of commitment, &c., name and official designation of the committing officer.	Crime established.	Sentence of the Session Judge and when it was passed.	Explanation and Remarks.

(Copy.)

MR. HAWKINS' MINUTE.

1. The points embraced in the letters of Government, Nos. 319 and 691, dated, respectively, the 19th February and 23d April, 1845, are three-fold:

First. The abrogation of appeals in Criminal cases.

Secondly. The simplification of Police and Magisterial proceedings.

Thirdly. The reduction of periods of imprisonment on conviction of Criminal offences.

I propose to consider the first point at some length, for the second depends in no small measure upon the disposal of the first. If appeals can be abolished, we may dispense with the records of evidence; if not, it is clear that evidence must be recorded.

2. But first, I would advert to what appears to be an unfounded apprehension on the part of the Hon'ble the Court of Directors, that the Criminal business of the country is done twice over. The number of cases decided, the sentences or orders in which were appealable to the Sessions Judge, from 1840 to the first half of 1845, inclusive, was 138,888; the number of appeals was 20,916; and the number of cases decided in the same time, appealable to the Magistrates, was 58,128, and the number of appeals was 7,695. In the one case, the number of appeals was something more, in the other something less, than $\frac{1}{7}$th of the number of decisions. In both, the proportion of appeals was certainly large, but not so large as would appear to have been apprehended by the Hon'ble Court.

3. There is, however, unquestionably a vast amount of labor imposed upon the several Courts as Courts of Appeal, from which they might be relieved, not only without disadvantage, but with decided advantage to the general administration of Criminal justice. The present pressure upon the Criminal Appellate Courts is not to be attributed, in my judgment, so much to the system which admits of appeals in some cases, as the legislative provisions on this subject which have for some years been in operation. The right of unlimited appeal, so long as an Appellate Court of any grade can be reach-

ed, has indeed been restricted, and yet never were the Criminal Courts burdened with a greater mass of appeals. Formerly, there was an appeal in every Criminal *trial* up to the Nizamut Adawlut; but the right of appeal was restricted to one appeal in all miscellaneous matters. Under the present system, the appeal is restricted in all cases, to the one Court immediately superior in its appellate jurisdiction to the Court of first instance; but the circumstances and adjuncts connected with the practical operation of the present law are such as to hold out every inducement to appeal; and hence the great multiplication of this class of cases in all the Criminal Courts of appellate jurisdiction.

4. It may be as well to refer briefly to the history of the law of appeal, in the several classes of cases which come before the Magistrate; and it will answer every purpose to commence with the year 1807. By the 23d and 24th Sections of Regulation IX. 1807, the Courts of Circuit and Nizamut Adawlut were declared respectively competent to revise all proceedings of Courts subordinate to them. These provisions were construed (and such construction was adopted in practice) as allowing appeals up to the Nizamut Adawlut, in every case of every kind that could come before the Magistrate or his Assistant. This law was modified by Section 3, Regulation IX. 1831, which drew a distinction between appeals in Criminal trials and miscellaneous cases. The former were still permitted to be carried in all cases up to the Nizamut Adawlut: in the latter, the appeal was to the Court of Circuit, whose order on the appeal was to be final. A further alteration took place under the provisions of Sections 5 and 6, Act XXIV. of 1837. By these enactments, an appeal was given in every case of every kind, (with the exception of cases referring to the appointment, suspension, or removal of Ministerial and Police Officers) from the order of the Magistrate to the Session Judge, the further appeal, in Criminal trials, to the Nizamut Adawlut continuing as before.

5. It is now time to refer to a peculiar class of cases, with the jurisdiction in regard to which the Magistrates were entrusted in the year 1824; I allude to cases of forcible dispossession. By Regula-

tion XV. of that year, they were authorized to try such cases summarily, occurring, however, only between contending *proprietors* (as construed by the Nizainut Adawlut) and their orders were not open to appeal, except upon the question of the relevancy of the law to the case tried. The law, however, had scarcely been in force five years, before an appeal was allowed under Regulation II. 1829, on the merits of the case, to the Commissioner of Circuit. The Appellate jurisdiction, in such cases, was of course transferred to the Session Judge, under the general provisions of Section 5, Act XXIV. 1837. The whole of the Regulations on the subject of the investigation of cases of forcible dispossession were rescinded by Act IV. 1840, which enacted further provisions on the same subject; and by which the jurisdiction of the Magistrate, heretofore limited to cases between contending *proprietors*, was extended to cases between any and all parties claiming an interest on the subject of dispute. Section 8 of the Act provided for maintaining the then existing law of appeal.

6. Such then was the law of Criminal Appeal in the year 1840. The sentence in every Criminal *trial*, whether held by the Assistant to the Magistrate, the Magistrate or the Session Judge, was appealable up to the Nizamut Adawlut; every other order of the Magistrate or Assistant to the Magistrate was appealable up to the Sessions Court.

7. By Section 1, Act XXXI. of 1841, all those parts of the Bengal Code which concern the powers and duties of the Criminal Courts, in respect to appeals and revision of sentences of a lower Court by a higher, were repealed. Every former provision was as if it had not been. The law of appeal was now a perfect blank; and the following provisions of the Act start, as it were, afresh, to prescribe the law of appeal, which exists to the present time.

8. The appellate authorities according to this Act are, the Magistrate, Joint Magistrate, or Officer exercising the powers of Magistrate; the Session Judge, and the Nizamut Adawlut.

9. The Act provides for an appeal to the Magistrate, from every sentence or order within the limitation prescribed by Sections 8 and 9, Regulation IX. 1793, (and corresponding provisions for Benares

and the Ceded and Conquered Provinces) passed by an Assistant to a Magistrate, or by a Sudder Ameen, or by a Law Officer, or by any other Officer under a Magistrate empowered to try Criminal cases. For an appeal also to the Session Judge, from every sentence or order beyond the aforesaid limitation, passed by any Officer exercising Magisterial authority. For an appeal also to the Nizamut Adawlut, from every sentence or order passed in Criminal trials by a Sessions Judge. It is to be observed, that other than Criminal trials come before the Sessions Court only in appeal. It will be seen from the foregoing precis, that there is no appeal from the sentence of a *Magistrate or Officer exercising the powers of Magistrate*, within the limitation prescribed by Sections 8 and 9, Regulation IX. 1793.

10. A limitation as to time was fixed for preferring the appeal, and Courts, under the degree of the Nizamut Adawlut, were prohibited altering any sentence or order of any subordinate Court, except upon appeal by parties concerned, duly made according to the provisions of the Act.

11. The power of enhancement of punishment of persons convicted, and of punishment of persons acquitted, was taken away from the Appellate Courts.

12. But, though the Sessions Judge was restricted from altering any order, except upon appeal by parties concerned, duly made according to the provisions of the Act, he was declared at liberty at any time to call for the proceedings of the Magistrate in any case, in order to satisfy himself of the regularity of the Magistrate's proceedings; and with reference to the concluding part of Section 5 of the Act, left, by implication, at liberty to certify to the Nizamut Adawlut cases of irregularity and illegality, with a view to having such irregular and illegal Acts rectified. Finally, the Nizamut Adawlut, as the Chief Criminal Court, was vested with powers to call for the records of any Criminal trials of any subordinate Court, and to pass upon them such orders as might seem fit.

13. Such is the present law of appeal and revision in Criminal cases.

14. I have said there are various circumstances which have tended of late years greatly to increase the number of appeals. These may shortly be alluded to. I advert to them, not with any reference to the propriety and expediency, or otherwise, of the measures, which have led to this increase; but merely as to facts accounting in some respect for the present state of things. When all trials were appealable to the Courts of Circuit and Nizamut Adawlut, under the provisions of Sections 23 and 24, Regulation IX. 1807, they were not so accessible as are the present Courts of Appeal. The Circuit Court was for the most part at a distance from the stations of the Magistrates; and this distance was not removed in regard to a vast number of cases by the half-yearly visits of the Circuit Judge. Any obstacle to the institution of appeals before the Court immediately superior to the Magistrate, of course, acts indirectly upon the Nizamut Adawlut, as a case must ordinarily go to the first Appellate Court before it can be carried to the second. Formerly the Appellate Court was competent to enhance the sentence of the Lower Court, and that even upon the appeal of the prisoner. This no doubt served to check appeals. At present, the Courts of Primary and Appellate jurisdiction are at the same station, and every facility is given for carrying a case from the one Court to the other. A privilege is now given to convicts, desirous of appealing to the Nizamut Adawlut, to present their petitions to the Session Judge, who is bound to forward it to the Superior Court. An appeal *upon the record* is now a matter of right, and upon the appeal being lodged, the Appellate Court must send for and revise the whole record. No sentence of punishment can be enhanced, and no sentence of acquittal can be reversed; a convict therefore has nothing to lose, and may be a gainer, by appeal. Regulation XV. of 1824, was construed to apply only to cases of disputed possession between contending proprietors—Act IV. of 1840, applies to every case of disputed possession of every kind. The number of cases has of course vastly increased; and with it the number of appeals to the Sessions Courts.

15. I now come to the question of the abrogation of appeals, discussed in the letter of the Secretary to Government, No. 319, of

the 19th February 1845; and, in passing, I would first make an observation in correction of an error into which the Government appear to have fallen in paragraph 9 of that communication. Judging from the number of appeals before the Session Judges, the Government conclude that the number tried by the Magistrates must be enormous. Now, under the law of Act XXXI. 1841, the appeal to the Magistrate is restricted to cases in which the sentence is within the limitation prescribed by Sections VIII. and IX., Regulation IX. 1793; all cases above that limitation are appealable to the Session Judge, that is sentences of fine to the extent of 50 Rupees, and imprisonment to the extent of 15 days, are appealable to the Magistrate; all above such are appealable to the Session Judge; and hence, it by no means follows, that because the number of appeals by the Session Judge is very large, the number to the Magistrate must be much larger.

16. The Government letter suggests various objections to the general admission of appeals in criminal cases. It observes, that the Court of First Instance, having the parties before it, is commonly better able to judge on matters of evidence and fact than any Court of Appeal, which sees only the record of the case. This is true; but the argument loses much of its force, when the practice throughout the country, of having the evidence in numberless cases taken, not by the deciding officer, but by a Mohurir of his office, is taken into consideration. In fact the Magistrate could not get on without some such assistance as this. My own personal experience of the Magistracy teaches me, that it is impossible for any man to examine all the witnesses who appear in the Foujdaree Court of a heavy district. This is understood by the higher Courts, and the practice of having evidence taken in lighter cases by a Mohurir has been connived at, if not sanctioned, for many years. It is obvious, that, in all such cases, the Magistrate acts as much upon the record only, as does the Session Judge. The witness, indeed, stands before the Magistrate while his deposition is being read, but he utters not a word, and a statue would answer the purpose just as well. I fear the practice goes far to nullify this argument of Mr. Secretary Halliday's letter.

17. But let it be admitted, that the Magistrate, or other Court of First Instance, does examine all the witnesses. The question must be asked whether all the officers, vested with power to sentence offenders to punishment, can be safely entrusted to deal finally with matters of evidence and fact. An inexperienced youth, just out of College, who has never examined a witness, never been trained to weigh evidence, probably ignorant of the first principles of the law of evidence, cannot surely be safely trusted with a power so great. It appears to me, that the means and materials with which we are compelled to work in this country, do not admit of an entire abrogation of appeals upon matters of evidence and fact, without running the risk of doing incalculable mischief, such as cannot be compensated for by any additional celerity in the despatch of business, and consequent diminution of vexation and annoyance to parties attending our Criminal Courts. These objects I would endeavour to attain by any means rather than the one suggested; as I fear the adoption of the Government proposition would often involve the irremediable punishment of the innocent, under the well-meant, but erroneous judgment of an inexperienced young man. Should circumstances render its adoption a matter of necessity, we must then yield, but let us not forestall or precede the necessity.

18. Again, as to the abrogation of appeals on matters of evidence and fact, in cases decided by the Magistrates themselves. I give every credit to the Magistrates as a body of zealous and intelligent men; but it must be borne in mind, that they exercise an authority far exceeding that of the Magistracy of our own land, or indeed, I believe, of any civilized people. This authority too is exercised by men discharging the functions of the two-fold capacity of the Criminal Judge and the executive Police. The Magistrate cannot but feel that the conviction and punishment of offenders is, in its own place, and in no small measure essential to the maintenance of that efficiency of Police for which he is responsible. He has a bias (possibly imperceptible to himself) towards the conviction of offenders; and has the power, on conviction, of imprisoning a man to long terms of imprisonment, according to the nature of the offence, to the extent of three

years. Would it be safe to leave this power in the hands of Judges, the executive duties of whose office, as officers of Police, are calculated to induce a bias on their minds against the accused; and to lead them, however, unintentionally and imperceptibly, to place the accused in that position in which the vast powers of punishment with which they are armed may be called into action; without giving a higher Court an appellate jurisdiction in matters of evidence and fact? I cannot think so.

19. In support of this view of the case (I mean the caution with which officers responsible for the Police, should be left to the comparatively uncontrolled exercise of large judicial powers,) I may be permitted to allude to the circumstances of a case having now and then come under the cognizance of the Court, in which there was strong ground for apprehending, that a very inadequate sentence was passed by the Magistrate, in order to ensure the certainty of the offender's punishment. There appeared to have been some apprehension in the mind of the Magistrate that the evidence would be insufficient to support the conviction in the Appellate Court, and rather than run the risk of a reversal of his order, he has confined himself within the limitation from which there was no appeal. Such cases are, indeed, of rare occurrence; and I have only alluded to them as indications of the necessity which exists, for the maintenance of an appellate jurisdiction over the proceedings of officers with whom the exercise of the temper, patience, and discretion, which should mark the judicial character, may be interfered with and impeded by the influence proceeding from a sense of those responsibilities, which devolve upon them as officers of Police.

20. With regard to the Sessions Courts, daily experience points out the propriety of maintaining the exercise of an appellate jurisdiction over their proceedings, by such a Court as the Nizamut Adawlut. The law administered throughout the entire jurisdiction of this Court, in the Regulation provinces, is one; but the administration is in the hands of many; and, as may naturally be supposed, multiform. Sentences for the same offences vary as much as they well can do; and to ensure any thing like an uniformity of admi-

nistration, there must be a controlling power, vested with authority to correct and amend the proceedings of the Sessions Courts. The criminal law was unquestionably administered with greater uniformity under the Circuit Courts, than it now is by the Sessions Courts. One Judge held the Circuit in a number of districts, and the sentences in Criminal trials for like or similar offences, in the entire extent of his jurisdiction, were much of the same character; and mutual intercourse and constant interchange of communication led to similarity of procedure and administration on the part generally of the Judges of a Provincial Court of Circuit. Now it is quite the reverse. One Judge takes one view of a class of crimes, another takes altogether a different view; and hence the necessity of a superior power to bring them as near as possible to something like uniformity. Besides which, all our Judges are not men of the same stamp. One may safely be trusted with extensive powers, while another requires a more vigilant supervision. For the most part they are men whose judgment can be depended upon; but there are exceptions, and there ever will be exceptions, and exceptions must be considered in cases involving the liberty of a man for all periods extending to fourteen years. The experiment now proposed of abrogating all appeals has not been tried for a period of half a century and upwards that our system of Criminal administration has been in force; and I do not think it can be safely tried now. The Circuit Judges were men of greater experience than many of our present Judges: they had the benefit of mutual consultation. Our present Judges act singly and alone: the Circuit Judges sat with a Law Officer, and a difference of opinion involved the necessity of a reference to the Nizamut Adawlut; our present Judges often sit with a jury, and are competent to over-rule the finding of a jury, and to proceed at once to sentence. The Circuit Judges were for the most part at a distance from the scene in which the trials were to be held, and came to the bench imprejudiced by previous information: it is to be hoped that the last clause describes the state of things now; but it cannot be denied that local information, and local association, may occasionally involve the possibility of a different result. The abrogation of appeals was

never thought of during the existence of the Provincial Courts. I do not think the experiment should be made now.

21. The Government proposition is, that appeals on matter of evidence and fact being abrogated, a full liberty of appeal on questions of law should be allowed. I can speak with some degree of confidence as to the result in regard to appeals from the Sessions Courts, and that result would be the reduction of the number of appeals to about an unit per annum. In preparing the fifth volume of the reports of cases tried by the Nizamut Adawlut I carefully examined the Criminal records of the Court for a period of six years; and have seen every sentence issued by the Court during the period of my actual employ as Register of the Court; and I can safely assert, that nothing is of more rare occurrence than the discussion of a point of law in connection with a Criminal trial. The law is, for the most part, clear as to what are crimes; what are the rules of procedure; what the mode of trial; and what the nature of the sentence. It is not in matters of law that the Subordinate Courts are so likely to go wrong. But while this is the case, the entire Criminal Code from first to last, from 1793 to the present time, is silent as to what is, and what is not evidence: it affords no test for the trial of evidence; all this is left to the discretion of the trying Judges, who again are vested with most extensive discretionary powers in the infliction of punishment. It is in these respects that the appeal is needed: in these practical, primary, and essential points that a resort to appellate authority should be permitted. Better that a casually occurring point of law should be wrongly decided, than that cases (frequent or few) of unjust conviction upon insufficient evidence, or excessive punishment upon right conviction, should be suffered to pass unredressed. Besides, how many of the class of convicts, know any thing of law? To tell a convict that the Superior Court could not give him redress, because no law was violated in the course of procedure which ended in his conviction, would be to mock him. And if he suffered as a victim of conspiracy or perjury, and was conscious of his innocence, how poor would be the satisfaction of learning that he has been convicted and punished according

to law, without one hope or one chance (so to speak) of redress from the law which thus provided for his conviction.

22. The power proposed to be still left to every superior Court of calling for, and inspecting, and reporting on the proceeding of its subordinates, without, however, altering the decisions passed by the latter, I hold to be a very insufficient remedy. The grievances to be remedied and the errors to be rectified, proceed, it may reasonably be concluded, chiefly from defect of judgment. To call for, and inspect, and report upon, the proceedings of the subordinate Court will do no good to the party aggrieved. And then to what extent is the inspection and reporting upon errors of judgment to be carried? To a far greater extent doubtless than it is carried now. *Now*, the reversal or modification of a sentence or order, in itself, conveys instruction to a subordinate Court, and serves as a guide upon like future occasions. *Then*, another mode must be adopted of communicating the instruction; correspondence will take the place of judicial decisions on the part of the superior, and remonstrance and defence, the place of obedience and submission on the part of the subordinate Court. The labor I believe would still be greater; but the ends attained not nearly so satisfactory as they now are under the permitted right of appeal.

23. 'But,' observes the Government letter, referring to the appointment of Deputy Magistrates throughout the country, 'the relief to the Magistrate will be merely nominal, and the comfort of the people very imperfectly promoted, if an appeal should lie from every case decided by the local functionary to the Magistrate at the district sudder station.' It appears to me, that this observation overlooks the fact, that a Criminal appeal is always tried *upon the record;* and that there is no further summoning by the Appellate Court of parties and witnesses. The comfort to the people then will be much the same, whether the right of appeal is continued or abrogated. The parties and witnesses will appear once, and only once before the Deputy Magistrate; whose office will be much nearer to them than the Court of the district Magistrate. If then the comfort of the people is promoted by the appointment of Deputy Magistrates, it will

not be disturbed by the appeal to the Magistrate. It is true, that to each of the Deputies posted in the Mofussil, there will come a much larger number of cases to be investigated from within the limits of his jurisdiction, than ever came to the district Magistrate from the same extent of his jurisdiction. But may not the same causes, which operate to prevent a case being carried to the district Magistrate in the first instance, operate also in some, though not to the same measure, in preventing a case being carried to him in his appellate capacity?

24. After what I have said, it is scarcely necessary for me to add, that I am against the entire abrogation of appeals on matters of evidence and fact.

25. I think, however, the present law may be modified with great advantage; so as to materially reduce the labor of the Superior Courts, without impairing the efficiency of the administration of Criminal justice.

26. I would recommend that the following provisions, taken from Act XXXI. 1841, with certain modifications, constitute the law of appeal in Criminal cases:

'That from every sentence or order in Criminal trials, within the limitation prescribed by Sections 8 and 9, Regulation IX. 1793, and corresponding enactments for Benares and the Western Provinces, or in judicial proceedings other than Criminal trials, passed by an Assistant to a Magistrate, or by a Sudder Ameen, or by a Law Officer, or by any other officer under a Magistrate, empowered to try Criminal cases, there shall be permitted one appeal to the Magistrate, Joint Magistrate, or officer exercising the powers of Magistrate, within one month from the date of such sentence or order.

That from every sentence or order in Criminal trials, beyond the limitation prescribed by Sections 8 and 9, Regulation IX. 1793, and corresponding enactments for Benares and the Western Provinces, or in judicial proceedings other than Criminal trials, passed by an Assistant to a Magistrate or other officer vested with the special powers described in Clause 3, Section 2, Regulation III. 1821, there shall be permitted, within one month as aforesaid, one appeal to the Sessions Judge.

That from every sentence or order in Criminal trials, or in judicial proceedings other than Criminal trials, passed by the Magistrate, Joint Magistrate, or other officer exercising the power of Magistrate, there shall be permitted, within one month as aforesaid, one appeal to the Sessions Judge.*

Provided, however, that no appeal from the order of a Magistrate, Joint Magistrate, or other officer exercising the power of Magistrate, or of an assistant to the Magistrate, or other officer vested with the special powers described in Clause 3, Section 2, Regulation III. 1821, which may be contested in a civil suit, shall be permitted upon any question of evidence or fact.

* I suggest this alteration in the existing law, as I do not thing it advisable to hold out any inducement to Magistrates to pass sentences upon insufficient evidence, inadequate to the alleged offence, in order to escape the interference of the Appellate Court.

That from every sentence or order passed in Criminal trials by a Sessions Judge, there shall be permitted within three months one appeal to the Court of Nizamut Adawlut. Provided, that it shall be competent to the Nizamut Adawlut, with reference to the statements of the petition itself, or to the Sessions Judge's monthly abstract of trials, to reject the appeal at once, or to send for the record of commitment and trial, as may appear advisable. The 3d, 4th, 5th, and 6th Sections of Act XXXL 1841, I would retain. I would further declare it competent to the Nizamut Adawlut to empower a subordinate Court to review an order not appealable, on good cause shown. The Court must have seen cases in which a review has obviated great injustice. The power has been exercised by the Court; but rather as a Court of general superintendence, than under legal enactment.

27. The points for which the above suggestions provide are the following:

(1.) One appeal from the sentence of conviction in every Criminal trial.

(2.) One appeal from the order in any judicial proceeding other than a Criminal trial, which is not liable to be contested in a civil suit.

(3.) No appeal from a sentence of acquittal.

(4.) No appeal with a view to enhancement of punishment from a sentence of conviction.

(5.) No appeal from matters of evidence and fact in judicial proceedings, liable to be contested by a civil suit.

(6.) The competency of the Nizamut Adawlut to reject an appeal without calling for the record of trial.

(7.) The competency of the Session Judges to report irregularities in cases not appealable.

(8.) The general controul of the Nizamut Adawlut over the proceedings of the Criminal Courts.

28. Some of the foregoing propositions may require remarks.

29. I have suggested that no appeal should be permitted upon matters of evidence and fact, from orders in judicial proceedings liable to be contested by a civil action. This will at once stop appeals in cases under Act IV. 1840, and reduce the number of Criminal appeals to the Sessions Judges in many districts, by probably not less than a third.

30. I am aware that Regulation XV. of 1824, had not been in operation above four years, when it was considered necessary to enact Regulation II. 1829, providing for an appeal in cases decided under the provisions of the former regulation. It was found that Magistrates occasionally proceeded too hastily in disposing of such cases, sometimes deciding them upon nothing more than a Darogah's report. The minutes of the Judges of this Court, recorded in 1828, with one exception, strongly urge the rescission of the law of 1824, and a return to the practice established by Regulations XLIX. 1793, and VI. of 1813. Now the course adopted occasionally by some Magistrates, of disposing of such cases in a mode somewhat too summary was unquestionably a grievance; but I doubt whether an appeal in *all* such cases, was the proper remedy. The object of the law was summary adjustment of disputes, in order to prevent breaches of the peace; but the appeal kept the dispute open for a long period, and thus, in a great measure, counteracted the good effects of the law. It would have been quite sufficient to provide for conferring upon the Superior or Appellate Court, power to

issue an injunction to a Magistrate to decide upon evidence what he had decided without evidence; and if in addition to this, the Nizamut Adawlut had prescribed a form of final proceeding in such cases, including heads for insertion of witnesses' names, and specification of documentary evidence, as in the decrees of the Civil Courts, the Magistrate would have been compelled to decide upon evidence instead of without it, in order to fill up his decree. By abrogating the appeal in such cases only on matters of evidence and fact, the power of issuing an injunction to the Lower Court such as I have suggested, is still reserved to the Appellate Court; and this I think is all that is necessary.

31. There is great and needless delay, I observe, in some districts, in the disposal of suits under Act IV. of 1840; and the reasons usually given have reference to the neglect of the parties in producing their evidence. This should be met by a rule analogous in its provisions to Section 1, Act XXIX. of 1841, which would materially expedite the disposal of such cases.

32. The suggestion that the Nizamut Adawlut should be empowered to reject an appeal, without calling for the record, is made with reference to what is known to be of daily occurrence in the Court, the presentation of an appeal just to try what may be called 'a man's luck.' The appeal cannot do harm, it may do good, and therefore be just as well tried as not. Though the petition of appeal may not show a shadow of a ground for interference with the sentence of the Sessions Court, the record must be called for and perused, as the only legal disposal of the appeal. Now this may be altered, I am satisfied, without doing any injustice. It is well in theory to lay down general principles; and it may be said that there should be one uniform practice in regard to the treatment of appeals from the sentences of all the Sessions Judges under the Court; but the Sessions Judges are not all men of the same stamp, and the general application of an abstract principle may lead to practical absurdities. There are Sessions Judges under the Court who are men of matured experience, sound judgment, and great industry; men who can take hold of the strong points of a trial, can see at once what is material to be proved and what is irrelevant; who can

examine and weigh evidence; who apportion punishment with discretion, and can give in their Monthly Returns a clear and lucid statement of trials held by them. There are others who do not come up to this character; and it would be manifestly absurd to treat them all alike. The Court feel, in their daily experience, that they have more confidence in some men than in others; and though I would not reject an appeal, merely because I had confidence in the Judge, I would allow such confidence to have its weight with me in considering a petition of appeal, in connection with the Judge's statement of the case. The exercise of the power I advocate, may, I think, be safely entrusted to the Court.* Whatever might have been the state of the law before the enactment of Act XXXI. 1841, the power was constantly exercised and was not found to work injuriously. Should the suggestion be adopted, it would be well for the Court to prescribe a form for reporting trials disposed of by the Sessions Judges. It would materially assist some Judges and be of great assistance to the Court.

33. I would strongly urge the revival of the provisions of Section 5, Regulation IX. 1831; premising that the powers to be thereby

* I observe Mr. Tucker advocates that all Appellate Courts, generally, should be vested with power to reject the petition of appeal at once, without perusal of the proceedings. I apprehend this will be impracticable, in consequence of the Courts of the Session Judge and Magistrate having nothing to go upon but the *proceedings*. The Session Judge submits to the Nizamut Adawlut an abstract of every case tried by him: he states the nature of the evidence, and the circumstances of the case; and an experienced eye will soon detect points of doubtful character, and, together with the petition of appeal, will have much before him to guide him to a right decision. Now it is to be apprehended, that the orders of the Magistrates and their Subordinates, if the rules of the Circular of the 10th June, 1843 are strictly adhered to, will scarcely supply sufficient ground for judging of the propriety or otherwise of the sentence appealed against. The general adoption of the practice as proposed by Mr. Tucker, must lead to greater detail in recording the nature of the evidence and the grounds of conviction. By this, something may be gained by the Appellate Courts; but much more labor will be imposed upon the Courts of First Instance. Now, as we have appeals in the proportion of one-seventh to the number of cases tried, I do not think it will be advisable to add greatly to the labor of the Inferior Courts, in order to save, in a less degree, the labor of the Higher Courts. Magistrates, in cases likely to be appealed, might record an English judgment.

conferred should not be exercised in cases of doubt as to the sufficiency or credibility of evidence, in regard to which the Nizamut Adawlut should never interfere except upon perusal of the record. It is an useless waste of time to call for and peruse records, when on the Sessions Judge's own shewing of the facts, his sentence is manifestly illegal, or too severe, or altogether opposed in its nature to some law or regulation in force. The possession of such a power not only enables the Nizamut Adawlut at once to remedy the error of the Sessions Courts, but also to equalize and assimilate, as much as possible, the administration in the various districts under its control. It sometimes happens that sentences differing as wide apart as they well can do, are passed upon conviction of similar offences on different sides of the boundary between two districts. A heavier sentence may be called for in one case than in the other, with reference to the state of crime in one of the districts, or other causes. The Nizamut Adawlut, however, has as good opportunities of judging of this, as probably any authority in the country. It does, however, sometimes happen, that such dissimilarity of punishment is attributable to no other cause than to the peculiar notions of a Sessions Judge, in regard to certain crimes. Let the power, I allude to, be revived, and the Court can check such anomalies of administration, as well as correct illegal sentences, at a much greater saving of time than is now the case, and that too, as far as I am capable of judging, with equally beneficial results.

34. The next point of consideration is the simplification of Thannah and Magisterial proceedings.

35. I do not think that the proceedings of the Police can safely be simplified, beyond the extent prescribed by the Circular Orders of the 16th June 1843, as far as the mere noting of the tenor of the evidence of witnesses is concerned. To see those orders properly enforced is the duty of the Magistrate; no depositions of witnesses need be recorded; all that is required is a note of the leading facts to which they can depose. To allow a Darogah to send in witnesses without such a record as this, would open a door to evils of greater

magnitude than any which it is attempted to remedy by the simplification of the proceedings. As a Magistrate, I always used the Darogah's proceedings as a check upon himself against abuse of authority, and invariably called him to account for taking away people from their homes, without sufficient cause, as shown by his own records. Do away with the summary record of evidence, which is now required of the Police Officer, and you do away with the check. It is the necessity of the record which induces the necessity of caution. Take the case of a witness denying before the Magistrate all knowledge of the crime to which he is sent in to depose; the Magistrate calls upon the Darogah to explain; the Darogah replies that the witness alleged his knowledge of the occurrence at the Thannah; but has been tampered with on the way; what now can the Magistrate do without any document to which to refer? He may, indeed, set on foot an enquiry as long as the case itself out of which it arose; but the record or note of evidence acts as a check both upon the Police and the witness; it may prevent the police sending in many a man who cannot buy himself off, and it may prevent a witness yielding to temptation to induce him to contradict what he has told the Police. But while I think the note of evidence to be essential, I would do away, as much as possible, with every thing else. All lengthened reports containing the opinions of the Police; all Sooruthals, except in cases of violent death (and these very briefly descriptive of the state of the body) should be at once abolished.

36. Nor do I think the record of evidence can be dispensed with in the Magistrate's Court; and, in fact, as long as appeals are allowed, evidence must be recorded. But I do not think it by any means necessary to record every *question* that is propounded to the witness. It would be sufficient to take down his evidence in the form of a connected narrative, without giving it in the form of question and answer, except when the record of the *question* might appear necessary to indicate any discrepancies in the deposition. This would greatly curtail unnecessary work; but I cannot recommend going further than this.

37. I do not think that the attendance of witnesses in the Magistrate's Court, for the purpose of previous examination in cases likely to be committed to the Sessions Court can be dispensed with, without incurring the risk of giving the Session Courts much to do that should be the province of the Magistrate, in the preparation of the case for trial. A case should appear before the Sessions Court stript of all superfluous and irrelevant matter; and this can only be done by the Magistrate in the preliminary investigation. The Police cannot be trusted with this; but material aid may be derived in this branch of Magisterial duties from the Deputy Magistrates posted in the interior of districts.

38. On the subject of long periods of imprisonment, I have but little to say. I believe that punishment by shorter periods of imprisonment than are now common, might be made much more severe than punishment now is, by an improved system of prison discipline. But the improvement of the system would involve an increase of expence; and may not be expected for a long time to come.* The subject is fully discussed in Note A. of the Criminal Code, prepared by the Law Commissioners, 'on the Chapter of Punishment.' The Commissioners are against the punishment of transportation in cases of temporary imprisonment; and no doubt, could the prison discipline at home be so improved as to render short periods of imprisonment severely felt, and efficacious to the end for which punishment is inflicted, there would be no need of resorting to other modes of punishment; but under present circumstances my own opinion is that transportation might be beneficially applied to cases of temporary imprisonment. As to the stringency of the rules under which the punishment in such cases should be introduced, I have the misfortune to differ with the Judges of the Court, who have already recorded their opinion in this matter, on a separate reference from the Government; and there is now no necessity for my entering upon this part of the subject. My opinion is briefly this, that short periods

* Were every jail supplied with 100 or even 50 solitary cells, the discipline might be greatly improved at no great increase of expence.

of home imprisonment, and transportation in cases of longer temporary imprisonment, would be a great improvement upon the present system.

I have not attempted to embody my suggestions in the form of a Draft of an Act,* for that would be premature, before obtaining some specific information as to the measures which Government might ultimately resolve to adopt. At present the subject seems to be more under discussion and consideration, than arrived at that stage at which a Draft Act can be submitted. On receiving intimation of the final resolution of the Government, with a specification of the particular points in the existing law which it is proposed to amend, the Court will lose no time in preparing the Draft.

* See para. 16, letter from Mr. Secretary Halliday, No. 310, dated 19th February, 1845.

(Signed) J. HAWKINS.

August 18th, 1847.

(True Copy,)

B. J. COLVIN,
Register.

List of Replies to Circular No. 9, dated the 28th February, 1845.

	Zillahs.	Nos.	Date.
From Offg. Session Judge,	Nuddea, ...	73	1st April, 1845.
Ditto Session Judge, ...	Chittagong, ...	69	7th ditto, „
Ditto ditto,...	Patna,...	113	10th ditto, „
Ditto ditto, ...	Beerbhoom, ...	36	16th ditto, „
Ditto ditto, ...	Backergunge, ...	—	16th July, „
Ditto ditto, ...	Moorshedabad, ...	134	28th Aug., „
Ditto ditto,...	Purneah, ...	39	6th May, „
Ditto ditto, ...	Shahabad, ...	171	14th Aug., „
Ditto ditto,...	East Burdwan, ...	73	21st May, „
Ditto ditto, ...	Sylhet, ...	15	16th ditto, „
Ditto ditto,...	Mymensing, ...	46	14th April, „
Ditto ditto	Jessore, ...	74	7th ditto, „
Ditto ditto,...	Hooghly, ...	73	22d ditto, „
Ditto ditto, ...	Tirhoot, ...	54	13th May, „
Ditto ditto,...	Bhagulpore, ...	69	27th March, „
Ditto ditto, ...	Cuttack,...	77	24th April, „
Ditto ditto,...	West Burdwan,..	47	8th May, „
Ditto ditto, ...	Sylhet, ...	18	31st ditto. „
Ditto ditto,...	Dacca,...	182	17th April, „
Ditto ditto, ...	24-Pergunnahs, ...	173	30th ditto, „
Ditto ditto,...	Midnapore, ...	55	30th ditto, „
Ditto ditto, ...	Behar, ...	84	10th May, „
Ditto ditto,...	Sarun, ...	69	12th April, „
Ditto ditto, ...	Rajshahye, ...	22	2d May, „
Ditto ditto,...	Tipperah, ...	111	10th April, „
Ditto ditto, ...	Rungpore, ...	40	24th ditto, „
Ditto ditto,...	Dinagepore, ...	81	26th ditto, „
Ditto Magistrate, ...	24-Pergunnahs, ...	474	10th May, „
Ditto Offg. ditto, ...	Howrah, ...	240	26th April, „
Ditto Magistrate, ...	East Burdwan, ...	178	25th May, „
Ditto ditto, ...	S. D. Cuttack, ...	87	17th April, „
Ditto ditto,...	C. D. Cuttack, ...	100	30th ditto, „
Ditto ditto, ...	Jessore, ...	226	28th ditto, „
Ditto ditto,...	Nuddea, ...	141	22d ditto, „
Ditto ditto, ...	Dacca, ...	15	2d May, „
Ditto ditto,...	Backergunge, ...	207	7th Aug., „
Ditto ditto, ...	Chittagong, ...	100	2d April, „
Ditto ditto,...	Mymensingh,...	62	29th ditto, „
Ditto Offg. ditto, ...	Tipperah, ...	105	10th ditto, „
Ditto ditto,...	Sylhet, ...	179	30th May, „
Ditto ditto, ...	Moorshedabad,...	263	24th April, „
Ditto Magistrate, ...	Bhagulpore, ...	250	17th ditto, „
Ditto Offg. ditto,...	Dinagepore,...	227	6th Nov., „
Ditto Magistrate, ...	Purneah,...	237	27th May, „
Ditto ditto, ...	Rajshahye,...	195	7th April, „
Ditto ditto,...	Behar, ...	218	25th ditto, „
Ditto Offg. ditto, ...	Sarun, ...	127 A.	31st March, „
Ditto Magistrate, ...	Shahabad, ...	116	28th ditto, „
Ditto ditto, ...	Tirhoot, ...	120	7th May, „
Ditto Offg. ditto, ...	Hooghly, ...	171	22d April, „
Ditto ditto, ...	Patna, ...	250	2d May, „
Ditto ditto,...	Rungpore, ...	77	26th April, „
Ditto Magistrate, ...	Balasore, ...	74	19th Aug., „

List of Replies to Circular No. 9, dated the 28th February, 1845.

	Zillahs.	Nos.	Date.
From Magistrate, ...	Beerbhoom, ...	97	7th April, 1845.
Ditto Joint Magistrate,.....	Pubna, ...	133	24th ditto, „
Ditto ditto,...	West Burdwan, ...	107	10th ditto, „
Ditto ditto, ...	Chumparun, ...	127	23d May, „
Ditto ditto,...	Bograh, ...	3	26th April, „
Ditto ditto, ...	Noacolly, ...	51	12th May, „
Ditto ditto,...	Furreedpore,...	146	21st April, „
Ditto ditto, ...	Maldah, ...	113	21st ditto, „
Ditto ditto,...	Baraset, ...	118	18th ditto, „
Ditto Dpty. Commissioner,	Assam, ...	32½	20th ditto, „
Ditto Offg. Magistrate, ..	Seebsagur, ...	150	16th ditto, „
Ditto 2d Class Principal Assist. Commissioner,	Nowgong, Assam, ...	57	9th May, „
Ditto Commissioner, ...	Arracan,...	13	13th ditto, „
Ditto Magistrate, ...	Luckimpore, ...	56	24th April, „
Ditto ditto,...	Durung,...	31	5th May, „
Ditto ditto, ...	Goalpara, ...	85	24th ditto, „
Ditto ditto,...	Kamroop, ...	38	1st ditto, „
Ditto Political Agent, ...	Cossya Hills, ...	196	20th June, „
Ditto Superintendent, ...	Cachar,...	31	18th April, „
Ditto Senior Assist. Commissioner, ...	Aeng,...	52	9th ditto, „
Ditto ditto, ...	Ramree, ...	385	2d May, „
Ditto ditto,...	Sandoway,...	1348	9th April, „
Ditto Commissioner, ...	Tenasserim Provinces,.....	131	9th ditto, „
Ditto Assist. G. G. Agent,	Manbhoom, ...	104	1st ditto, „
Ditto Dpty. Commissioner,	Hazareebaugh, ...	17	25th ditto, „
Ditto Agent G. G., ...	S. W. Frontier.	7	22d ditto, „
Ditto Principal Assistant Agent G. G., ...	S. W. Frontier, ...	216	8th ditto, „
Ditto ditto,...	Lohurdugga Dn,..	154	10th ditto, „

B. J. COLVIN, *Register.*

List of Replies to Circular No. 11, 25th April, 1845.

	Zillahs.	Nos.	Date.
From Magistrate, ...	Balasore, ...	54	23d June, 1845.
Ditto, ...	Tirhoot,...	136	26th May, „
Ditto, ...	Pooree, ...	108	16th ditto, „
Ditto, ...	Moonghyr, ...	261	24th ditto, „
Ditto, ...	Beerbhoom, ...	135	20th ditto, „
Ditto, ...	Bhagulpore, ...	355	19th ditto, „
Ditto, ...	Patna,...	319	30th ditto, „
Ditto, ...	Sylhet, ...	224	4th July, „
Ditto, ...	Sarun,...	253	22d ditto, „
Ditto, ...	Shahabad, ...	172	2d May, „
Ditto, ...	Behar,...	232	3d ditto, „
Ditto, ...	Rajshahye, ...	305	4th June, „

List of Replies to Circular No. 11, 25th April, 1845.

	Zillahs.	Nos.	Date.
From Magistrate, ...	Purnea, ...	196	3d June, 1845.
Ditto, ...	Dinagepore, ...	86	16th May, „
Ditto, ...	Moorshedabad, ...	298	3d ditto, „
Ditto, ...	Tipperah, ...	135	3d ditto, „
Ditto, ...	Mymensingh,...	93	4th ditto, „
Ditto, ...	Chittagong, ...	138	15th ditto, „
Ditto, ...	Backergunge, ...	106	3d ditto, „
Ditto, ...	Dacca, ...	16	5th ditto, „
Ditto, ...	Nuddea, ...	209	5th June, „
Ditto, ...	24-Pergunnahs,...	410	28th April, „
Ditto, ...	East Burdwan, ...	150	13th May, „
Ditto, ...	Midnapore, ...	224	7th June, „
Ditto, ...	C. Dn. Cuttack, ...	108	7th May, „
Ditto, ...	Rungpore, ...	93	8th ditto, „
Ditto, ...	Jessore, ...	239	3d ditto, „
Ditto, ...	Howrah, ...	326	21st June, „
Ditto, ...	Hooghly,...	198	2d May, „
From Joint Magistrate, ...	Bancoorah, ...	179	29th ditto, „
Ditto, ...	Bograh,...	4	28th April, „
Ditto, ...	Baraset, ...	125	30th ditto, „
Ditto, ...	Furreedpore, ...	177	10th May, „
Ditto, ...	Maldah, ...	151	23d ditto, „
Ditto, ...	Noacolly, ...	59	12th June, „
Ditto, ...	Chumparun, ...	...	27th May, „
Ditto, ...	Pubna, ...	...	5th ditto, „

B. J. COLVIN, *Register.*

APPENDIX.

(No. 100.)

FROM THE MAGISTRATE OF THE C. D. CUTTACK,
TO THE DEPUTY REGISTER TO THE COURT OF SUDDER NIZAMUT ADAWLUT.

Fort William.

SIR,

I have the honor to acknowledge the receipt of the Court's Circular, No. 9, dated the 28th February, (issued on the 22d ultimo,) transmitting for my information and report, letter No. 319, of the 19th idem, from the Secretary to the Government of Bengal, and I proceed to communicate my sentiments regarding the plan therein proposed, for simplifying Criminal Proceedings held before the Magistrates and the Mofussil Police Officers.

2. That reform is greatly required is a subject on which there can exist not the slightest doubt, but the extent and manner in which it is advisable to introduce it, is a question; the proper decision of which, is as difficult as the subjects to be considered before coming to any conclusion, are numerous and important; however, I shall endeavour to express my views in as condensed a form as I am able, with reference to the two-fold, or *pro* and *contra* view, which it is necessary to take of the case.

3. The abridgment of the power of appeal, as well as the curtailment of the Proceedings, held either by the Magistrate and his Subordinates at the Sudder Station, or by the Police Officers in the Mofussil, in any material degree, or at all events to the extent suggested in the Government letter, are, in my humble opinion, founded on long personal experience, objectionable; inasmuch, that I do not consider such a reform suited to the moral and social condition, and the habits of the people of the country.

4. As respects the power of appeal, conjointly considered with the proposal to abridge, and in some instances to dispense with, the existing practise of recording the testimony of witnesses; I would

remark, that if the record is incomplete, the power of the Appellate authority, to arrive at a correct understanding of the grounds of a decision of the Lower Court, will be so circumscribed, as to render the appeal, if not a nullity, the next thing to one; and as owing to the construction of human agency, in all its multifarious degrees of perfection and imperfection, errors in all proceedings, originating either in oversight, carelessness, ignorance, or perversion, are constantly occurring, I do not think it would be judicious, at a time when a new system is about to be introduced, and the magisterial agency placed in the hands, comparatively speaking, of uneducated and inexperienced persons, to withdraw those checks, which, for the period of three-fourths of a century, it has been considered necessary to impose on the intelligent and honorable class of Officers, comprising the Civil Service.

5. The cases in which it is in contemplation either greatly to abridge the proceedings, or entirely to dispense with the practice of recording testimony, are what are designated in common Court *parlance*, "*huzoory nalishes*," or cases in which the applicants for justice are in the habit of presenting their petitions in person, the nature of the charges being such as affect individual interests, rather than society at large, but although it is very true that among those there are preferred in a great number of frivolous and exaggerated complaints, there are likewise many that contain well founded and serious charges of calamity and oppression, practised by the wealthy and strong, over the weak and poor, and it is scarcely necessary to remark, that the quiet possession and enjoyment of the small homestead, with its one or two surrounding biggahs of land, the sole refuge and support of the poor cultivator, is a subject of the same momentous interest to him, as is that of a Talook, or large Zameendarry, to the wealthy landlord; and therefore while the chances of the rights of the former being encroached upon, greatly exceed those incurred by the latter, I would not deprive them of any of the little protection, that the present state of the laws affords them.

6. Except in the cases of a few determined litigants, who are always to be found in every district, and are soon detected by a

vigilant Magistrate, I cannot help thinking the general condemnation, not unfrequently advanced of the people for litigiousness, is unmerited in the sense in which it is applied, for a moderately close observer, after exercising the functions of a Magistrate for a few years, must be sensible, that great oppression is exercised in many instances by the landlords, over their tenants, and consequently that there exists much need for judicial investigation. The bribery and corruption that the poor suitor has to contend with, as well as the privations that all parties attending the Courts, are compelled to undergo, are, in my judgment, a sufficient guarantee against unnecessary litigation, on the part of the multitude, or the larger portion of the population of a district, though there will always be exceptions to the general rule, and therefore, I think, I have sufficiently proved, that to abolish the recording of testimony, and to restrict, *beyond moderate limits*, the power of appeal, would only be to arm the strong and dishonest with weapons against the poor and more honest portion of the people.

7. The reckless disregard of truth, which prevails throughout the country, also furnishes a most powerful reason, why the practice of recording testimony, that is relevant to the matter at issue, in full, should be retained, for truth and falsehood issue alternately from the mouth of most witnesses, during a cross-examination, with such great rapidity, that most men would be puzzled at the termination of a case how to decide, if they had not the record to refer to; and when, as in many instances, evidence is only to be col
the difficulty in procuring the attendance
would, in consequence of the numerous a
daily come before him, not unfrequently
first part of the evidence before he heard
might to a great extent be obviated by the Magistrate's taking copious notes, (as I have always been in the habit of doing in heavy cases,) but one man cannot write incessantly the whole day long, as the presiding authority would have to do, if he were the sole recorder of the evidence in every case.

8. Therefore after having deliberately considered the subject in all its bearings, I do not think it would be judicious to abridge the proceedings of the Magistrates and the Police Officers to *a greater extent*, than is contemplated in the Court of Sudder Nizamut Adawlut's Circular, No. 138, of the 16th of June 1838, and the extracts from the Reports appended thereto, and if I may, without being considered presumptive, in consequence of not exactly coinciding in opinion with my superiors, I would humbly add, that Rule No. 4, embodied in the 3d para. of the above quoted Circular, affords opportunity to witnesses being tampered with and cajoled, or bribed, to deny before the Magistrates, what they have deposed to before the Police. However, I will here repeat what I have before admitted, there is much to be said in favor and against every point that can be mooted, regarding the Police and the duties connected with it, that it is difficult to pronounce with confidence what is best, for if, on the one hand, my argument is correct, on the other, the Police may intimidate witnesses to fashion their evidence according to their pleasure. Taking my own experience as my guide, I am more inclined to believe the fundamental stumbling block in the road of justice, is the tendency on the part of the natives to conceal rather than to disclose crime, and they do not wilfully and gratuitously bear false testimony towards the condemnation of their fellow men, though they are sometimes suborned to do so; and it is on this account, that I think it advisable, that their first statements should be recorded. It is undoubtedly better that many guilty persons should escape, than one innocent man should be condemned, but it is not the less to be regretted, that because of a too scrupulous dread of such cases occurring, the greatest adepts in crime, should elude their merited punishment.

9. The proposed plan of reform therefore not meeting my views, it is not necessary I should occupy the Court with any further remarks, and I will therefore conclude this Report, by merely observing, as somewhat corroborative of the opinion I have recorded, that, the number of appeals referred to in the eighth paragraph of Mr. Secretary Halliday's letter, in one third of which, the order of the Lower Court was reversed, furnishes argument in support of the

continuance of that power, for it shows, that the people are not satisfied with the justice that has been dealt to them. Public opinion, the surest guarantee for the due performance of the duties of Judicial Officers, as well as those of every other class of men, is not to be met with in this country, (in the interior of it at least,) and therefore to check the abuse of power, every decree or official act, should be open at least to one appeal, and I would restrict it to one only.

I have the honor to be,
Sir,
Your most obedient servant,
M. S. GILMORE,
Magistrate.

C. D., Zh. Cuttack, Magistrate's Office,
The 30th April, 1845.

No. 87.

TO THE REGISTER OF THE NIZAMUT ADAWLUT,
Fort William.

SIR,

I have the honor to acknowledge the receipt of your letter of the 22d ultimo, with its enclosure, requiring a report of my sentiments on the suggestions made for simplifying the proceedings of Magisterial Officers.

2. Any measure that would tend to diminish the accumulation of records in petty Fouzdarry cases could not but be highly advantageous. Our system now delights in de
without pen, ink, and paper, even the co
cases require the same formal proceedin
dacoity. A charge of assault which a
decide in half an hour, will probably be in
entrusted with transcribing the depositions, &c., from three to four hours, and this, when there are many examinations to be taken down, is productive of delay and inconveniences to the witnesses, which might well be avoided.

3. I believe the generality of Officers make use of a private Note Book, in which they make memoranda of cases under trial before them. I am inclined to think this book, if kept up in some proper form, with a short Vernacular proceeding written at the same time, would be all the record in addition to the original petition that need be kept in such cases as the following:

Simple assault.

Leaving service without notice.

Neglect of duty.

Abusive language.

Forcible detention of cattle.

Petty larceny and theft of property of less than 10 rupees value, and unattended with aggravating circumstances.

Misconduct.

Contempt of Court.

Snatching from the person.

Committing nuisances.

Trespass.

The proceeding and Magistrate's Note Book might contain much the same information as he is now in the habit of writing in it, viz., a very short abstract of the prosecutor's charge, the names of the witnesses, with a brief summary of their evidence as to how far they substantiate the complaint and implicate the defendants enumerated by the prosecutor, and a short account of the defence, concluding with the grounds of his decision and the sentence passed. The vernacular proceeding might be in precisely the same form for the convenience of the Native department, and for facility of reference; such a plan as this would not take up more of the time of the Magistrate than is now occupied in hearing cases, while the witnesses would find a great benefit from it.

4. I would also strongly advocate that cases tried and decided under this plan should not be open to appeal except on questions of law, as suggested in the correspondence under notice, but I would confine this limit of appeal to the proceedings of Officers, who had been in actual employment under a Magistrate not less than 12

months. I doubt whether it could safely be extended to Officers without some little experience.

I have the honor to be,

Sir,

Your most obedient servant,

R. N. GARRETT,

Magistrate.

Sn. Dn. of Zh. Cuttack, Magistrate's Office, Pooree,
The 17th April, 1845.

No. 474.

FROM THE MAGISTRATE OF 24-PERGUNNAHS,
TO THE OFFICIATING REGISTER OF THE NIZAMUT ADAWLUT,
Fort William, dated Allipore, May 10, 1845.

SIR,

I have the honor to acknowledge the receipt of the Court's Circular, No. 9, of the 22d March, which reached this office on the 26th March.

2. The question of the proposed limitation of Criminal appeals is one of much difficulty and importance. There is much to be said on both sides, the arguments for the restriction of appeals to points of law are so forcibly put in the letter of Mr. Secretary Halliday, that little further can be advanced in support of the view taken by His Excellency the Governor. It remains to consider the objections, and they should be weighed well in the balance against the advantages, before so radical a change in our crim[illegible] The subject may conveniently be divided into

1st. The question of restricting crimi[illegible] points of law.

2d. Appeals from decisions of Sessions [illegible]

3d. Ditto from Magistrates and Joint Magistrates.

4th. Ditto from Judicial Officers at the Sudder Stations.

5th. Appeals from Deputy Magistrates stationed in the interior.

6th. Appeals from decisions under Acts IV. 1840 and XXI., 1841.

3. With regard to the restriction of appeals generally to points of law, the first difficulty, which strikes me, is that in a multitude of cases it is not easy to separate the question of fact from that of law. It is undeniable that in almost every instance of a Criminal Judicial Officer commencing his functions in this country, he begins by trying and adjudicating cases. It is said in the 10th para. of Mr. Halliday's letter, that the Magisterial Officers are highly paid; this, with due deference I would submit, is at the present moment scarcely correct. On the contrary magistracies are placed in the lowest grade as to salary of any independent office in the service, indeed quite out of all proportion to the responsibilities imposed upon the Officers in charge of them. The consequence is that the first office, which a young man in this country holds under the present system, is that which is strongest armed with power to do good or evil—a magistracy. He is responsible for the peace of the Zillah, and the head Police Officer in it, blamed, if his convictions do not balance his acquittals—harassed with these dacoities undetected, and those rioters unapprehended, perplexed with this falsehood, and that exaggeration, and with little public opinion in which he feels a sympathy—is it not to be expected that an ebullition of temper will sometimes occur, and that a sentence not justified by the exact circumstances of the particular case, and supported by credible evidence, will be passed, and such is frequently the case. As a check to this it is proposed to retain in the hands of the superior a power to call for cases, and report upon them without altering the decision. This alone will afford no redress to the sufferer, and it is to be expected that such a rule would only bring to notice the cases of those who wish to have a revenge; probably only those of rich and influential persons. In this country also where false evidence is so rife, it must be expected that even the best and most skilful officer is sometimes imposed upon, and an innocent man made to suffer for an offence, which subsequent events or circumstances newly brought to light might satisfactorily prove not to have been attributable to him.

Appeals generally.

4. As regards the decisions of Sessions Judges, these objections to the proposed limitation do not apply with much force. The trials are held sometime after the occurrence of the offence. They are presided over generally by men of experience, having only judicial duties to perform, and are gone through with great care and deliberation. I think therefore that the right of appeals from them might with advantage be abrogated, and that the interference of the Sudder might properly be restricted to those cases in which any illegality, or strong ground for suspicion of a failure of justice may appear.

Appeals from Sessions Judges.

5. I cannot advocate a sweeping abolition of appeals from *all* Magistrates and Joint Magistrates, under the present system, experienced or inexperienced, except on points of law, for the reasons set forth in paragraph 3. If, however, the office of Magistrate were made one higher in the scale of the service, as from its importance it ought to be, and great care were taken in the appointment to it, the rule suggested in Mr. Halliday's 5th paragraph, (which I presume, supposes the authority receiving the Report to have the power of abrogating or altering the sentence) might be adopted. Or indeed, if there were grades of Magistrates, promotion to the higher proceeding from experience of the officers' discretion and judgment, the rule might be restricted to those in the first class. But I am aware that there is an objection to a system of grades from the difficulty of ascertaining with precision the relative merits of officers, and it is perhaps this which has induced the Government in every instance, where grades have been established in the Civil Service, to abolish t

Appeals from Magistrates and Joint Magistrates.

short trial.

6. Similar restrictions from appeal fro

Sudder Ameens a

are almost invaria

Appeals from Judicial Officers at the Sudder Station.

rience and knowledge of the native character, might with safety be imposed. Law Officers receive but a scanty salary, and Assistants are at the commencement of their career necessarily inexperienced.

I would therefore deprecate restriction on the right of appeal from them further than that established by Act XXXI. 1841.

Appeals from Deputy Magistrates in the interior.

7. As regards Deputy Magistrates stationed in the interior, if a right of appeal from them on the merits of a case were not allowed, I cannot see how a Magistrate would have an opportunity of knowing how they did their duty, indeed even with a right of appeal to me, I should feel a great difficulty in satisfying myself in what manner the duties of a Deputy Magistracy, subordinate to me, were performed; when to interfere and how to superintend it.

Appeals under Acts IV. 1840, and XXI. 1841.

8. I have no hesitation in saying that appeals from decisions under Acts IV. 1840 and XXI. 1841, are worse than useless—a remedy is always open by a regular suit.

Objections to recording evidence in a book.

9. Before I conclude, I beg to point out that if a Judicial Officer were required to keep his proceedings in a book, and that book be liable to be called for by his superior, inconvenience must necessarily arise from the detention of it for inspection. Great advantage would emanate from a rule making it optional with an officer to record the depositions shortly in his own hand-writing. The Vernacular takes so long in writing, and the natives are so very unapt at condensing the substance of what a person says, that when, as is very frequently the case, it is desirable for the presiding officer to examine the parties in a case himself; his time is greatly wasted by the slowness with which the evidence is recorded. This remark applies also to cases before Sessions Judges. The notes of evidence might be forwarded to the superior officer, when required, with greater convenience, if kept separate in each case, than if written in a book.

I am, Sir,

Your most obedient servant,

R. H. MYTTON, *Magistrate.*

No. 207.

To the Register of the Nizamut Adawlut,

Fort William.

Sir,

In obedience to your letter of the 1st of August 1845, No. 1052, I have the honor to submit the following observations for the Court of Nizamut Adawlut:

Although the minor assaults and larcenies which form the bulk of crime in this country are virtually, when tried by a Magistrate, without appeal, such for instance as petty assaults where the punishment is 50 rupees or 15 days, or as thefts where the imprisonment is under a month, yet it does not frequently happen that these sort of cases employ a Magistrate's time. It would seem reasonable that when a Magistrate, from the absence of an Assistant, Native or European, or from other causes, employs himself on these minor cases, he should have the power of dismissing them at once on a summary *vivâ voce* hearing of the case, and without committing any of the evidence to paper; as in these instances no appeal lies to the Session Judge, there does not seem to be any necessity for burdening the office with a file of papers, when a summary notice of the crime and punishment is ample. But it so happens that, owing to the provision which forbids a Magistrate to do that work which can be done by his subordinates, and to the absolute necessity of employing such subordinates on work suited to their capacity, young hands are in 9 cases out of 10, those to whom the great bulk of small crimes are committed for decision. To allow that they, on first starting, should have the power of deciding on a summary *vivâ* [illegible] secure a speedy attention to the claims of the [illegible] time would almost abolish all power of appea[l] would be neither safe nor satisfactory.

There does not, however, seem to be any [illegible] with the powers of Joint Magistrates, or e[ven] [illegible] merely special powers, when schooled and tried under [illegible]acter, [illegible]e of an experienced officer, should not have the power of adjudicating all trivial cases without taking down all the depositions in writing, subject at the

same time to a supervision by the Magistrate, who, from his own knowledge of the cases, made over in all probability, after his own hearing of the original petition, or the Darogah's report, would be well able to exercise such a constant direction over his subordinates as would amply satisfy the important ends of justice; nor again does there appear any strong reason for not entrusting such a power in small cases to Joint and Deputy Magistrates, when located out in the district, as, according to the intention of Government, they are not to be entrusted with, what will in reality be a jurisdiction of their own, until their powers have been exercised and confirmed by a considerable apprenticeship at the Sudder Station.

With regard to the simplifying of appeals of the like cases from the Sudder Ameens, it may not unreasonably be doubted if any *large class of natives* are yet ripe for an independent jurisdiction even in cases of trivial importance, and whether the ryut would contentedly acquiesce, under the opinion so generally prevalent of native venality even in high places, in the *final* decisions of an Asiatic Judge.

With regard to the simplifying of appeals from the higher power—the Magistrate—to the Session Judge, the matter seems considerably more complicated. It may fairly be assumed that, however careful officers may be in their judicial investigations under the present system, when they are aware of a further tribunal always open to the criminal, the increased responsibility of a final decision would be productive of an increased activity, and a still more careful investigation on their part, before issuing an opinion from which there was no redress. Such, it may be fairly expected, would be the feeling uppermost with nine men out of ten, to whom a final jurisdiction had been entrusted. But we must remember that few of the Magistrates of the present day are men of long professional experience, or advanced age, and to give a man whose period of service did not extend beyond seven or eight years, a jurisdiction final, except in cases of life and death, over a tract of country as large as are most of the Bengal districts, is an experiment of which the safety may reasonably be doubted. If, however, the trial is to be made, the

principle which should establish two different sets of Magistrates, seems the one likely to hold out the fairest hopes of success. As it is, public servants frequently pass into Collectors before serving the length of time which might warrant a more extended power than is at present enjoyed by any Bengal Magistrate. Now, if a higher grade of Magistrates were established, chosen according to natural qualifications, exercised powers, and professional and local experience, the experiment of giving them a final jurisdiction over crimes now punishable by two years' imprisonment, such as burglary and others, might be made without any great degree of temerity. The heaviest crimes, murder, dacoity, arson, rape, &c. &c., would still continue to be committed for the decisions of the Session Judge, nor need the Magistrate's power of giving a certain extent of imprisonment without appeal, prevent a regular supervision on the part of the Judge, of the books, the cases, and the whole manner of carrying on business in the Magistrate's Court, in the same manner as he, in his turn, would exercise a surveillance over the Joint Magistrate and the Assistant.

The number of appeals in criminal cases from the Magistrate and the subordinate Joint Magistrate being thus considerably diminished without any great danger to the sound working of justice, the records might still further be lessened by the total abolition of appeals under the Act IV. of 1840, as in these summary suits an efficient remedy is always at hand, one indeed which is generally resorted to in the end by one party or the other, in a regular suit in the Civil Court.

A system, based on such reforms as the[illegible] would go a fair way towards simplifying the proceedings of a C[illegible] ends of justice, and it might probably be sti[illegible] ing even in cases of heavier nature than [illegible] imprisonment, an appeal on points of law fr[illegible] Session Judge, while those on questions of [illegible] in still weightier crimes, from the Session Judge to the Sudder Nizamut Adawlut. Even taking into consideration the many difficulties known to occur in separating and defining the boundaries of law and fact, a copy of the order appealed against, clearly stated with perhaps

a short abstract of the case, might enable the higher authority to decide at once whether the question preponderated in favor of the law or the fact, and so further to receive or to reject the petition of the appellant, at any rate a short account furnished *on demand by the lower authority*, and setting forth the reasons for his verdict, might in many cases relieve the superior officer from any doubt as to which course he should pursue.

A few of the above changes, if introduced in the Company's Courts, would soon give the means of judging if the present forms of jurisdiction could with safety be curtailed or not.

I have the honor to be, Sir,

Your most obedient servant,

W. SETON-KARR, *Acting Magistrate.*

Zillah Backergunge, Magistrate's Office,
The 7th August, 1845.

No. 250.

TO B. COLVIN, ESQ.,

Officiating Register to the Court of Nizamut Adawlut,

Fort William.

SIR,

I have to acknowledge the receipt on the 28th ultimo of the Court's Circular, No. 9, of the 28th of February last, calling on me for a report of my sentiments on the subject of Mr. Halliday's letter to the Court of the 19th of the same month, No. 319.

2. The subject of that letter I shall proceed to notice under the following heads. The propriety or otherwise:

1st. Of revising the present system of *Record.*—2d. Of revising the present system of *Appeal.*—3d. Of revising the establishments of Magistrates, and increasing the salaries of Serishtadars, and necessary Omlah.

First.—The propriety or otherwise of revising the present system of Record.

3. Our system of record is undoubtedly cumberous and objectionable. The most trifling and unimportant, as well as the most

serious case, is, under the present system, recorded in an absurdly voluminous manner. The great delay which but too frequently takes place in our Courts, and which is generally charged to the idleness or incapacity of the Magistrate, might, I believe, in the great majority of cases, be attributed to the necessity which at present exists, of taking evidence, at length, in all and every case. Thus, in perhaps an important case, A is detained (say) a month at the Court before his case is decided; this detention takes place not because the evidence in his case is particularly voluminous, or because of any culpable neglect on the part of the authorities; but because there are perhaps 50 other petty and absurd cases, in all of which half a dozen men have to be examined, the deposition of every one of whom has to be written by one of the Court Omlah in the presence of the Magistrate, and headed with a long account of the witnesses' ancestry, who was his father, who his mother, where he lives, &c. &c. But for this system, the 50 cases above alluded to, might all be summarily disposed of at the same time as the evidence of the witnesses in A's case, was being recorded. This picture is not, I believe, overdrawn. It is a common case, and merely forms one of the many, in which the delay attending the decision of a suit, is a more grievous evil, than the original evil sought to be remedied.

4. In cases of murder tried by Jurors under the English Law, it is not considered necessary to take the depositions in writing; but in a case of abusive language by one old woman towards another, or the theft of a seer of tobacco worth one anna, all the depositions under the Indian Law, must be recorded.

5. In most Magistracies, I believe, the
not sufficient for the load of work requi
somehow or other, the work *must* be got t
for an increase of establishment will be l
done, if arrears accrue? the blame falls o
mohurirs are entertained, as omedwars, on the understanding that they are to succeed to vacancies as they occur. When I joined this office, I found that there were 18 men thus employed, and that (more or less) this number had been employed here for the last 4 or 5 years.

They were omedwars, and had been living all this time upon, apparently, nothing: at least they received nothing *from Government;* I need not say from whom they *did* receive ample allowances.

6. I should be glad to see all written depositions abolished in trifling cases from which no appeal lies to a Superior Court. I would reserve, however, the right to any party in a case, of having the evidence recorded, if he wished it, and chose to pay for it. I would also allow the officer presiding in the Court, to order the depositions to be taken in writing whenever he might see fit; but even in such cases, much delay might, I believe, be avoided, by recording only the answers by, and not the questions put to, each witness.

7. I would wish to guard myself against having it supposed, that I underestimate the value of recorded evidence in important cases. It is absolutely necessary—but the question is, whether the practice is not carried too far in our Courts. A witness is more scrupulous in his deposition, when he knows that what he says is recorded, and that he cannot afterwards gainsay it. Recorded evidence furnishes also a strong security against the errors and negligence of Magistrates, as was exemplified the other day in the correspondence circulated by Government, relative to the removal of Mr. Dalrymple from his office at Sarun. It is likewise advantageous, from being as complete a security to a good witness and a good officer, as it is *against* a bad witness and a bad officer; all I would desire is, to see it reserved for important cases, and for such as may be appealed.

8. I should also be very much inclined to prevent the *accumulation* of records (for the accommodation of which the Government is put every year to additional expense in building record rooms) by destroying all the papers in a case, except the roobukary, (which should be carefully drawn up), the moment the time allowed for an appeal had lapsed.

Second.—The propriety or otherwise of revising the present system of Appeal.

9. My opinion upon this point is, that the abolition of all appeals, "on matters of evidence and fact," as suggested in Mr. Halliday's letter, would be an act of the very greatest benefit in every way,

but that it should be preceded by another act, i. e. raising the qualifications of Magistrates.

10. So long as very young officers, who have not been out of College more than 3 or 4 years, are appointed to the important posts of Magistrates of Zillahs, so long it would *not* be advisable, in my opinion, to alter the present system of appeal. But remodel the establishments, by making the present Collectors, (officers of from 10 to 15 years' standing, and on the receipt of 1,900 Rs. a month), Magistrates upon the same allowances, and the present Magistrates, Collectors upon 900 Rs. a month each, and the proposal for diminishing the stages of appeal, would have my hearty and cordial support.

11. It is true that my opinion has not been asked upon this subject, but as it results from the one I have formed on the subject of Appeals from the decisions of Magistrates, I trust that the Court will not think I am "travelling out of the record" in thus expressing myself. Their late distinguished colleague, Mr. D. C. Smyth, publicly recorded an opinion to very much the same effect in 1838.* Mr. Halliday, the present Secretary to Government, in his memorable Police Minute, recommended the same thing.† Mr. Macan, the former Register of the Court, Mr. Hawkins, the present Register, and, I believe, I may add, more than one of the Judges, who now compose the Court, did, at the same time, record their opinions, as to the necessity of having Officers of experience and judgment as Magistrates.

* See Appendix to Police Report, page 6.

† Ditto, page 42.

12. My own impression is, that the Magistrate is, without any exception, the most influential officer at a civil station, this [illegible] considered a startling statement, but I make [illegible] the Commissioner, the Judge, the Collector [illegible] Magistrate has more power of doing good or [illegible] all of them put together; that he has more [illegible] more known to the people; and that he is m[illegible] them all.

13. On my way from Calcutta some short time ago, I made a point every evening, when my boat was anchored, of strolling into

the nearest village and talking to any ryuts or others whom I met. I never once found that they were acquainted with the name of either the Commissioner or the Collector, and very seldom of the Judge; but they could always tell me not only the *name*, but a good deal more, about the Magistrate. He is pre-eminently the officer of the people, and has a heavy responsibility on his shoulders, and yet I believe it would not be impossible to point to a district, in which the relative standing of the four Officers I have named, would be nearly as follows:

Commissioner,	24 years.
Judge,	43 years.
Collector,	18 years.
Officiating Magistrate,	3 years.

14. I must repeat therefore what I have stated before, that it would *not*, in my opinion, be proper to diminish the stages of appeal under present circumstances.

15. At the same time I have to say, that no one is more sensible than myself of the very great disadvantages of the present system of appeal. I quite concur in the following sentiments, which formed the opinion on this subject, of one of the most eminent of the many eminent men, of whom this country has just reason to be proud—Lord Hastings:

"The facility of appeal is founded on a most laudable principle of securing by double and triple checks, the proper decision of all suits; —but the Utopian idea, in its attempt to prevent individual injury from a wrong decision, has been productive of general injustice by withholding redress; and general inconvenience, by perpetuating litigation. The peace of society and the general welfare of the State are less concerned that questions of *meum* and *tuum* should be well decided, than that the ground of contention should cease."

16. The very fact of allowing so many appeals, shows that but little confidence is placed in the decisions of Officers, and this very fact again makes a Magistrate more careless in his decision; he does not take as much trouble as he would do if his decision were final; for, he says to himself, if I am doing this man an injury, he can set it right by appealing.

17. Again, the Law of Appeal is an Aristocratic Law, it is the law of the rich man, from which the poor man is, in a measure, barred. It is not the man who has suffered the greatest injury who appeals; but it is the man who has sufficient money in his pocket to pay for the extra expense. To be truly just, appeals should be allowed (whenever they are allowed at all) *gratis*.

18. The law is also an unsatisfactory one; for, in an appealed case, the superior authority has only documents to go by; he has not the parties before him; he cannot see where the testimony is defective, if it be so; nor can he put questions to obtain any information he requires; he cannot see the *conduct* of witnesses and parties; the physiognomy,* the tone of voice, the firmness or fear, readiness or embarrassment, simplicity or bad faith of the parties, all of which would have been evident to the authority, who decided the case in the first instance. The uncertainty as to the ultimate decision of a case, which the existence of an appeal causes, is in itself a great evil, and gives impunity to criminals, and encourages the wicked; the terrors of the law are diminished in proportion to the facilities afforded for appeals, since it allows so many additional chances of escape. Appeal cases also load the files of the Courts with useless documents, giving unnecessary trouble and annoyance, and benefitting none but the criminal, by adding to his chances of escape; and the Court Omlah, by giving them employment, which they would otherwise be without.

* See Bentham's Judicial Evidence.

19. Upon a question of *Law*, two opinions may frequently be formed by two persons without either of th
an imputation upon his integrity or his tale
frequently as Doctors, and on such points a
perly be allowed; but on matters of eviden
by Mr. Halliday, appeals should be barr
stated above, the qualifications of Magistrates be raised, or, which is the same thing, more experienced Officers be appointed to such offices in future.

20. I now come to the third head.

Third.—The propriety or otherwise of revising the Establishments of Magistrates, and increasing the salaries of Serishtadars and necessary Omlah.

21. In Mr. Halliday's letter this question is made to follow upon the *reduction* of a part of the Magistrate's establishment, from the contemplated abolition of the present cumberous system of record.

22. I am only too glad to find that there is the remotest chance of any increase being made to the pay of Serishtadars. They are the hardest-worked and worst-paid Native Officers under Government. By many officers a Serishtadar is at once put down as a man without principle, probity, or honor; whose only object is to fill his purse as soon as he can, at the expense of the community at large. This may be the character of some, but it is not so of by far the greatest portion of those whom I have seen. I consider that a Serishtadar should be a sort of confidential servant to a Magistrate; not a mere reader of papers and writer of orders. I have generally found it a good plan to place confidence in my subordinates, *and to tell them so.* I make my Serishtadar sign himself every paper which he brings to me for signature; he knows therefore that he is responsible for every order issued from my office, and I believe that the giving him this responsibility is of much advantage.

23. I should like to see a Serishtadar's pay raised above that of a Thannadar, than whom he has more power and influence indirectly. In fact, most Foujdary Serishtadars (all *good* ones) *have been* Thannadars, and I will venture to say, that they would rather be Serishtadars upon Rs. 50, than Thannadars upon Rs. 100 per mensem. This may be thought by some a proof of their venality, and it may be said that they prefer the small salary, because the unauthorized receipts swell the total above the larger sum; but I am not at all inclined to concur in this; I believe that they prefer it (whenever they *do* so prefer it) simply because the occupation is a pleasanter one, less liable to worry and suspicion and uncertainty of tenure; it also gives them a consequence by keeping them always by the side of the Magistrate; in fact, to compare small things to great, I believe that they prefer it, just on the same principle as I

could fancy a man preferring the post of Private Secretary to the Governor General upon Rs. 3,000 a month, to that of a Salt Agency upon Rs. 3,500 a month.

24. Whilst upon the subject of increasing salaries, I should like to say a word in favor of Mohurrirs and Jemadars of Thannahs. These officers, throughout the district, receive rupees 8 per mensem. When the Thannadar is away on duty (investigating any case) one or other of these officers is Thannadar *pro tempore*. Can it be wondered at, that a man on such a pittance, when invested for a short time with *supreme* power, should abuse it?

25. With reference to para. 6 of Mr. Halliday's letter to the Court, recommending, in lieu of the present system of appeal and record, that each officer "should keep a book in which he would enter in his own language and hand-writing a sufficient memorandum of the cases tried, of the evidence, and of his reasons for decision," I beg to enclose copy of a communication from myself to Mr. Raikes, the Joint Magistrate at this place, from which the Court will observe that the plan recommended by the Government is precisely the one which I adopted, immediately on my arrival here, and before receiving the Court's Circular under acknowledgment.

I have the honor to be,
Sir,
Your most obedient Servant,
J. H. YOUNG,
Magistrate.

Zillah Bhaugulpore, Foujdary Adawlut,
The 17th April, 1845.

No. 207.

To R. C. RAIKES, ESQ.,
Joint Magistrate,
Bhaugulpore.

SIR,

I yesterday made over to you by Roobukary the entire controul of the following Thannahs:

1. *Bowsee*—2. *Luckerdewanee*—3. *Kalkapore*—4. The four small Hill Thannahs.

2. I have desired that all the reports from the Darogahs of these places shall be made to you direct, and that they shall in every way, be under your immediate controul. You will appoint and dismiss all native officers attached to these divisions as may seem fit to you, but you will report all such proceedings to me.

3. I would wish you to keep an English Book according to the annexed form, in which *all* cases (including petitions, &c.) should be entered by you in as *concise* a manner as possible. This book I should desire to see in original every now and then, say every fortnight, and any case which I may desire to see, you will, of course, forward to me. As Joint Magistrate you are competent to exercise precisely the same powers as myself,* and may therefore make your own committals to the Sessions.†

* Construction No. 1231, July 12, 1839.
† Cir. Ord. No. 16, July 26, 1844.

4. You will thus have a great deal of responsibility upon your own shoulders, and you will have the opportunity, if you desire it, (which I have no doubt you do) of showing the Superintendent of Police and the Government in what way you conduct the duties of your office.

5. An officer of your standing, and entrusted with the Magisterial powers which have been lately made over to you, should not, in my opinion, be confined to the subordinate duty of deciding merely such small cases as may from time to time be transferred to him; were I suddenly to leave the district, it is more than probable that you would be put in charge of it: and it is as well to prepare you for this, by giving you a separate charge at once.

6. As I have transferred, so, of course, I have authority to recall and to re-attach to my own jurisdiction the duties I have now entrusted to you, and should I at any time do so, you will not consider it as any reflection upon your management (unless I should expressly say so); but merely as indicating a desire on my part to become acquainted with the Police Officers and people of such re-annexed districts, or, may be, to test the working of the system now adopted.

7. By throwing the responsibility of the Police jurisdiction of these Thannahs upon you, I hope to give you a pleasure in and a taste for your work, which you might probably otherwise not have, but I am desirous, at the same time, of carrying you with me in this measure, and if, therefore, you would rather not undertake the duty I have pointed out, you have only to say so, and I will relieve you from it.

I have, &c.,
(Signed) J. H. YOUNG,
Officiating Magistrate.

Zillah Bhaugulpore, Foujdary Adawlut,
The 27th March, 1845.

FORM.

No.	Parties in the Case.	Summary of the Case.	Order and Remarks.

(Signed)

(True Copies,)
J. H. YOUNG,
Magistrate.

No. 237.

FROM THE MAGISTRATE OF PURNEAH,
TO THE REGISTER OF THE NIZAMUT ADAWLUT,

Fort William.

Purneah, dated 27th May, 1845.

SIR,

I have the honor to acknowledge the receipt of the Court's Circular, No. 9, dated 28th February last, together with its enclosure, relating to the simplification of the proceedings of the Magistrates and Police, and in reply, beg to offer the following brief remarks:

2. It is, I believe, universally admitted that the present system of administration of criminal justice labours under two very grievous defects. One is, that which compels an injured party seeking redress, to undertake a journey to the Sudder Station, not unfrequently of 100 miles, sometimes much more, at a sacrifice of time, often ruinous to an indigent suitor, but for which the law allows no compensation. The other evil lies in the forms with which our system of administration is encumbered, and which necessarily renders justice tardy and difficulty to be obtained. The former amounts almost to a denial of justice, the latter is, to say the least, hard and very unfair, whether as regards the complainant, his witnesses, or the party prosecuted.

3. As a check to the first and most pressing evil of the two, the arrangements which have been for some time in contemplation, and partly carried in the appointment of Deputy Magistrates to a few districts of the province, added to the more extended operation of the measure, now under consideration, of locating Covenanted Joint Magistrates in the interior districts in charge of a circle of Thannahs, will, I think, prove of infinite advantage to the public, and more acceptable, than if, as was originally intended, certain magisterial powers had been delegated to the Moonsiffs.

4. Both systems aim at the same object, namely, to bring justice nearer to the doors of the people. But is not the time of the Moonsiffs sufficiently occupied already; would it be advisable to

make them subordinate to two separate departments? I think not. In short, whether as regards the Police, who are now almost beyond the reach of control, or the people who are too far removed to obtain justice, the locating Deputy Magistrates in thickly populated parts of districts, with a sort of independent jurisdiction of their own, appears to me to be the most judicious arrangement of the two, and when once brought into active operation, will prove of incalculable benefit to the people.

5. With respect to what has been very properly termed the present cumbrous system of record and appeal, which not only retards business, but often uselessly occupies the time of the Magistrates, I am of opinion that, in all petty cases of assault, larcenies, and trifling misdemeanours, the summary mode of procedure, recommended in the 6th para. of Mr. Secretary Halliday's letter, would be found highly advantageous, and infinitely more acceptable, as well as better suited to the state of society, than the present harrassing system. Now, in a case of theft (the property stolen perhaps not exceeding four annas), 8 or 10 people are called in and kept in attendance four or five days, who, but for the necessity of their evidence being recorded, might not be detained half an hour. Under such a system it stands to reason, that parties are often deterred from prosecuting, and that much crime must go unpunished.

6. With respect to Appeals, should it be found necessary in all petty cases to adopt a more summary mode of proceeding, such as that referred to, appeals from the orders passed on such cases could not well be admitted. But I am not disposed to think that there is at present any absolute necessity, [illegible] be advisable to abrogate the right of appeal i[illegible] it is found necessary to record the evidence i[illegible] those instituted under Act IV. of 1840.

7. It has often struck me that the adm[illegible] orders passed under this Act, is as much opposed to the spirit and intention of the law, as it is injurious to the efficient working of it. A case is instituted under Act IV., a decree given in favor of the

plaintiff, and an order sent to the Darogah to maintain him in possession; the opposite party appeal, and pray that the Magistrate's order to the Darogah may be stayed, pending the decision of the appeal; the Judge acquiesces, and the Darogah is instructed to leave the land in regard to possession as he found it, the disputes going on as before. Six months after the case is sent back to the Magistrate for further investigation on certain points material to the issue. Fresh evidence is adduced, and after another lapse of a month or two, the Officer, whoever he may be, comes to the same conclusion that he did at first. Again an appeal is preferred, and, after a lapse of 18 months from the date the case was first instituted, possession is finally decreed to one party or the other. I mean to say that such cases are by no means uncommon. Now, supposing that the dispute was for possession of a crop on the ground, as is frequently the case, to what endless orders and counter-orders, not to say losses, must these appeals give rise. The very object for which the law was formed is at once frustrated.

8. Finally with respect to the salaries of the head Omlah of the Magistrate's Court, (the Serishtadar and the Peshkar,) I should hail with extreme satisfaction any arrangement that could be devised, which would raise their salaries to an adequate amount, for I do not hesitate to say that of all the servants of Government, that ever came under my notice, these two Officers are the hardest worked and worst paid. I am only afraid, supposing the plans now entertained are carried out, that it will be found difficult to dispense with any such number of Mohurrirs, as will create a saving sufficient for the purposes required.

I have the honor to be,
Sir,
Your most obedient servant,
G. L. MARTIN,
Magistrate.

No. 195.

FROM W. M. DIROM, ESQ.,
Magistrate,
TO THE REGISTER OF THE SUDDER NIZAMUT ADAWLUT,
Fort William.

SIR,

I have the honor to acknowledge the receipt of your Circular letter, No. 9, dated the 28th February, issued the 22d ultimo, with its enclosure, copy of a letter, No. 319, dated 19th idem, from the Secretary to the Government of Bengal, conveying suggestions for simplifying the proceedings of the Magistrates and the Police.

2. As directed I have the honor to submit a report of my sentiments on the subject, now under discussion, for the information of the Sudder Court.

3. The proceedings of the Mofussil Police and the Magistrates have been considerably curtailed by the orders conveyed in the Sudder Court's Circular, No. 13, dated the 16th June, 1843. With regard to the Police, were the said orders strictly attended to by the Darogahs in the preparation of their *Sooruthalls* and other reports, I am of opinion, that their proceedings would be forwarded to the Magistrate, in as concise and compact a form as can be effected under the present system. Attention, however, to the orders above cited ought to be strictly enforced, and Police Officers, habitually inattentive to them, ought to be reported to the Superintendent of Police as unfit for office. The Darogahs are much attached to the old verbose method of preparing their rep
adopt the new form. I am now using my
attention to it in this district.

4. With reference to the proceedings
Court much remains to be done. The pr
Appeal is much too cumbrous and quite unsuited to the habit of the people, the delay caused by it is harassing in the extreme, amounting almost to a denial of justice to the lower orders. In a district like this, where the great majority of people attending the

Magistrate's Court are very poor, or, in other words, dependent upon their daily labour for their daily food, speedy justice is every thing, and there can, I think, be but one opinion, that the quicker their cases are disposed of the better they will be pleased. A more summary mode of procedure ought therefore to be introduced into our proceedings, which might, I conceive, be easily effected in all cases of petty assault, larcenies and trifling misdemeanours. As to the manner of introducing such a mode of procedure so as to afford relief to the Magistrates, and at the same time ensure a fair and prompt administration of criminal justice, I am of opinion, that in the first place the objectionable multitude of appeals permitted under the existing law must be got rid of, or much modified, otherwise nothing effectual can be done.

* Cases instituted,.. . .	947
Referred to Subordinates, ...	447
Remaining before Magistrate, ...	450
Appeal to S. Judge, ...	87
Do. from Subordinate Magistrate, ...	44
Total Appeals...	131

5. In the margin* is noted the number of appeals preferred during 1844 from the Court's subordinate to the Magistrate, and also from this Court to the Session Judge, the number is not very large with reference to the number of cases instituted, but when the new plan of locating Officers in the Mofussil is adopted, appeals would doubtless increase very much, it is consequently of great importance that the present law of appeal be modified, otherwise the new plan would be of little use. It is evident that, if an appeal be permitted to the Magistrate in every case decided by the Deputy Magistrate, or Asssistant in charge of a circle of Thannahs, the relief to the former functionary will be nominal, and the people will derive little or no benefit from the measure, as the time of the Magistrate will be occupied in hearing appeals from his subordinates, and the people concerned would still have to attend at the distant Sudder Station. I would therefore recommend, as suggested in the 4th paragraph of Mr. Halliday's letter, that all appeals in matters of fact and evidence be disallowed, and appeals only admitted on point of law. The Magistrate before whom the parties are heard is in general, I should say, better able to form a correct judgment in petty criminal

cases than the Court of Appeal, which sees only the record of the case. I would also suggest that in summary suits for possession of land, under Act IV. of 1840, no appeal be allowed from the Magistrate's orders, except to the Civil Court. In cases of this nature, where the only point to be determined is, that of actual possession at the time the dispute arose, the Court of First Instance, before which the parties are heard, and by which decisions are frequently given on the spot, is decidedly better qualified to form a correct opinion than the Court of Appeal. The Magistrate's decision does not in any way affect the rights of the parties to the land in dispute; but merely keeps one of them in possession until their rights can be determined by the Civil Court, I can therefore see nothing gained by an appeal to the Session Judge except continued litigation, and keeping the matter in dispute unsettled for a much longer time than there is any necessity for.

6. Were the proposed system with regard to appeals adopted, it would, as stated in the 6th paragraph of Mr. Halliday's letter, be unnecessary for the subordinate Criminal Courts to record petty cases of assault, larceny, &c., a book kept by the presiding functionary, in which he should enter an abstract of each case, with the orders of the Court, and the reasons for the decision, would be a sufficient record. The reduction of a number of subordinate Mohurrirs now employed in recording evidence might follow the introduction of this plan, the savings from which might, as stated, with great advantage, be applied to increase the salaries of the head Omlah, such as Serishtadars, Peshkars, Nazirs, and Writers in the English Department, an object of very great importance, these Officers being at present very inadequately paid.

I have the honor to be,

Sir,

Your most obedient servant,

W. M. DIROM,

Magistrate.

Zillah Rajshahye, Magistrate's Office,
The 7th April, 1845.

No. 120.

FROM E. A. SAMUELLS, ESQ.,
Magistrate of Zillah Tirhoot,
TO B. J. COLVIN, ESQ.,
Offg. Register Nizamut Adawlut,
Fort William.
Dated at Mozufferpore, the 7th May, 1845.

SIR,

I have the honor to acknowledge the receipt of your Circular letter, No. 9, of the 28th February, with its enclosure from the Secretary to Government, calling for my sentiments on the suggestions for simplifying the proceedings of the Magistrates and Police contained in the Secretary's letter.

2. These appear to be two, the limitation of appeals to points of law, and the abolition of the present system of records.

3. The benefits resulting from the establishment of an Appeal Court are contingent on the superior judgment and experience of the presiding Officer. The former we cannot always secure, and the latter is in a great measure neutralized by the advantage which its *vivâ voce* proceedings afford to the Lower Court. No doubt an unjust decision is often rectified by the Appellate authority, but who shall say in how many instances the reverse is the case? It is certain also that the facility of appeal tends to encourage a litigious spirit, and to give the rich an undue advantage over the poor. Being, therefore, of opinion, that the increased certainty of justice to the suitor derivable from the present system of appeals does not bear the high ratio to the risk of injustice, (which it also holds forth) that it is frequently supposed to do, and believing that it is otherwise objectionable, I consider that it might with advantage to the community be very considerably modified. Adverting, however, to the defective training which Civilians at present undergo in the College of Fort William, and to their consequently imperfect comprehension of the cases brought before them for many months after they take their seats on the bench—to the over-zeal and hastiness of young Magistrates, which occasionally leads them to convict on suspicion in the

absence of clear legal proof, and to the necessity of an adequate check on the proceedings of the Native Judges, I would propose that an appeal should in future lie, not only on points of law as suggested by the Secretary to Government, but also *in cases of manifest deficiency or total absence of proof.* The latter class of appeals would not be admissible where there was any evidence at all, (however incredible it might seem to the appellate authority) bearing upon the accused, and consequently appeals would be limited to cases in which there could be little or no dispute as to the propriety or otherwise of the decision. The power of calling for and examining the proceedings of the Lower Courts, and of reporting any irregularities or improper decisions, ought undoubtedly to be left with the Appellate authority; but I do not place much value on this check, as the parties who may have suffered by a wrongful decision are not likely to take the trouble of complaining where they can gain nothing by it, and unless they do so, the Appellate Officer has nothing to guide him in calling for any one case rather than another.

4. I conceive the abolition of records to the extent proposed in the Secretary's letter to be impracticable with any regard to the pure and speedy administration of justice. It is true, that most English Courts have no records of proceedings, but in the case of English Magistrates and Justices of the Peace, it must be recollected that their jurisdiction and their powers are alike limited, that they can have the whole of the parties to a case before them in most instances at once, and that where additional evidence is required, the witness can be brought up by the constable in a day or two at furthest. Here the case is widely different. Weeks must often elapse between the evidence of one witness and that of another, and the decision in numerous cases turns upon the amount of discrepancy, or agreement in the two depositions. Notes would not shew this unless they were taken at a length, which would defeat the object of the suggested change, and it would thus become necessary, not unfrequently to re-summon the first witness and keep the other waiting until he made his appearance. Then suppose it should appear that the first witness had committed perjury, the question arises how is

he to be convicted. A mere general note of the evidence probably loosely expressed will not be sufficient, and thus perjurers will escape with impunity even more frequently than they do at present. It is clear also that the abolition of records must destroy all check over the proceedings of the Subordinate Courts. It is quite impossible that the real state of the case in the majority of instances can be gathered from rough hasty notes taken while a trial is proceeding, and indeed it may be doubted how far these notes would always be legible. Experience leads me further to believe that the end contemplated in Mr. Halliday's letter will not be attained by the means he proposes. So far from the business of the Courts being accelerated by the abolition of records and the discharge of the Mohurrirs, very serious delay will be the probable consequence. At present if five cases come in at once, four are being prepared while one is being tried, and the whole may thus be disposed of in the course of the day. If the examination in chief, as well as cross-examination is to be conducted by the Magistrate and noted in every instance, it is highly improbable that he will be able during the day to get through more than one or two at the most of such cases as he ordinarily retains on his own file, and many will occupy, as they now do, the Sessions Court from three to four days each. The record system may be much simplified; questions may be omitted and merely the answers recorded as in newspaper reports; in petty cases merely a summary of the evidence need be given, but with reference to what I have stated above, and to the fact, that it is frequently of great moment to be able to refer to the record of a past trial, and to the detailed evidence which it contains, I think that its total abolition is seriously to be deprecated. Many other difficulties, such for instance, as the case of capital or other crimes referrible to the Sudder, will doubtless occur to the Court as standing in the way of the proposed plan; but I have above stated, I conceive at sufficient length, the grounds of my objections.

I have the honor to be, Sir,

Your most obedient servant,

E. A. SAMUELLS, *Magistrate.*

No. 171.

To W. KIRKPATRICK, ESQUIRE,

Deputy Register to the Court of Nizamut Adawlut,

Fort William.

SIR,

In reply to the Court's Circular, No. 9, of the 22d March, calling for a report of my sentiments on the suggestions made for simplifying the proceedings of the Magistrates and Police, I have the honor to inform you that I think nothing will tend more to advance the ends of true justice than by so doing.

2. It is a well known fact that the system of writing the depositions of witnesses in every petty case is a perfect drag on the time of the Magistrate without producing any good effect; and that the consequent system of unlimited appeal, although it may produce some little advantage, yet eventually is a source of great oppression, enabling the rich to trample on the poor by protracting the period of the decision of every case.

3. At present appeals from all orders beyond the limitation prescribed by Regulation IX. of 1793, Sections 8 and 9, lie to the Sessions Judge. I think that all orders in matters of evidence, from a Magistrate, or Officer with full powers of Magistrate, within the limitation of an Assistant vested with special powers, should not be appealable; that all orders of an Assistant or Deputy Magistrate, duly qualified within the limitation defined by Regulation IX. Sections 8 and 9 of 1793, should also not be appealable; but that all orders of an unqualified Assistant or Deputy Magistrate should be appealable; and that all appeals from orders within the limitation of an Assistant vested with special powers should lie to the Magistrate.

4. In this manner many appeals will be removed from the Sessions Judge to the Magistrate, who will have increased leisure consequent upon the division of the Thannahs among his subordinates as is proposed at present. If this be the case, no Officer but unqualified Assistant and Deputy Magistrates will require to write the depositions of witnesses in petty cases, the rest will merely have to keep a Register Book, a form of which I have the honor to annex in Appen-

dix A, which will explain my meaning plainer than can be done by writing. The presiding officer will, of course, keep the book in his own hand-writing. In all cases the punishment due to which is likely to exceed any officer's unappealable powers, the depositions will require to be written as at present, although I think even this might be much reduced by merely putting down the substance of each witnesses words.

5. I think, however, than in all cases whatever an appeal should lie to the higher authority in points of law. The officer from whose order the appeal is made will only have to forward an extract from his Register, which will be perfectly sufficient.

6. To simplify the proceedings of the Police, and at the same time keep a due control over them, is more difficult, but much more needful. We must bear in mind, however, that by placing Assistant and Deputy Magistrates in charge of circles of Thannahs, the Police will necessarily be kept in greater awe, and, by increasing their salaries, we must hope that some little trust and confidence may be reposed in them without their betraying it. On taking up a case of dacoity, which occurred not long ago, I perceive that there are upwards of 150 pages of the Darogah's proceedings alone, which not only require many hours to write, but occupy time which might be far more beneficially employed, and tend to mystify the Magistrate, who has to wade through them. I think that, as no Magistrate puts any confidence in a Darogah's bulky reports, they may be entirely done away with, and can be reduced to the following papers:

1st. Immediate information of the crime committed as at present, with the deposition of the prosecutor or informer.

2nd. Confessions of prisoners duly attested as at present.

3rd. A brief examination of the wounded man or corpse, and examinations into the signs of dacoity, burglary, &c., as in Appendix B.

4th. Form of sending in prisoners as in Appendix C.

5th. Form of forwarding stolen property as in No. 3, of Regulation XX. of 1817.

6th. Recognizance of witnesses and prosecutor.

7th. Abstract of the whole examination as in Appendix D.

In the forms I have taken a dacoity as an example, but in the same manner an investigation into murder or anything else may be made. Omitting or not, as the case may require it, the form for sending in the stolen property. I do not think that anything more is necessary.

I have the honor to be,
Sir,
Your most obedient servant,
S. WAUCHOPE,
Officiating Magistrate.

Zillah Hooghly, the 22d April, 1845.

No. 250.

To W. KIRKPATRICK, ESQ.,
Deputy Register to the Court of Sudder Nizamut Adawlut,
Fort William.

SIR,

I have the honor to acknowledge the receipt of the Court's Circular, No. 9, dated 28th February last, regarding suggestions for simplifying the proceedings of the Magistrates and the Police, and in reply, have the honor to make the following observations:

2. 1st. With reference to appeals; the total abrogation of them in all questions of evidence and fact, appears to me to be a measure, the advantages of which are somewhat questionable; the chief difficulty in our Courts arises from questions of this nature; the Regulations and Orders of Government are simple, and a Magistrate very seldom finds any difficulty in coming to a correct decision with reference to the law of the case; the weighing justly the value of the evidence brought before him, on the contrary is a matter of some consideration and importance, and requires discrimination and judgment. A young officer, when first appointed to decide cases,

will fail on these points, and, however well acquainted he may be with the principles of law and the nature of evidence in most countries, will find himself puzzled, when he has to decide between the conflicting statements of two parties supported by the testimony of witnesses, apparently equally candid and telling their different stories with the same particularity of detail and with the same plausibility: it is only by a knowledge of the nature, character and of the customs of the country, which alone can be acquired by experience, that a correct judgment can be formed: if then an Officer is at first to decide without any appeal against his judgment, he will most probably get into a method of doing business, which will be erroneous, and which he will get confirmed in, and which he will be unable to shake off; the system of keeping a note book might indeed be some check, but as he would have to put down his own statement of the facts, and there would be no means of contradicting any inaccuracy, a person without much effort of genius might make the worse appear the better side of the question. To a person at all inclined to be dishonest, the want of appeals would afford every opportunity of committing any irregularities without the least chance of their being brought to light or challenged. The abolition of appeals to the Judge, from the decision of the Magistrate, appears to me unadvisable; cases of great importance are decided, and the check of a more experienced and mature judgment would afford a security to parties seeking redress in our Courts, which, I think, is highly necessary; but certainly the present system admits of modification, I would have it incumbent upon the party appealing to produce a copy of the order he is appealing against, as well as reasons for so doing; this, as His Excellency observes of appeals on points of law, admits of a decision in many instances being passed upon the presentation of the petition; this and the infliction of a penalty in all cases of frivolous or vexatious appeals, or indeed of any in which the Judge thinks good grounds did not exist for impugning the judgment of the subordinate court, would have the effect of stopping all appeals except where such a measure was really advisable and necessary: appeals should only be allowed after the case has been completed, or

where the interlocutory order has been shown to be clearly illegal or reprehensible. The present system, where the higher authority, upon all cases of appeal, can instantly stay the order of the subordinate court, and that too merely upon a petition setting forth that he is dissatisfied with the order passed, and without giving sufficient reasons for so doing, completely destroys the authority of the subordinate courts, harasses the parties who have recourse to them for redress, and generally prevents those who are not rich, and whose only object is to bring our interminable litigation to annoy their adversaries, from resorting to them. A total abolition of appeals would be better than such a system. With regard to the time taken up in hearing appeals under the checks above-mentioned, it would not be considerable, and would not interfere with other business; during the three months I have been officiating as Magistrate here, I shall be under the mark, when I state, that for every hour I have been in Kutchery hearing appeals, I have been employed twenty in other business. With regard to appeals to the Sudder from the decisions of the Session Judge, there would be no harm in doing them away altogether, the case would have passed the Magistrate, who would not have committed it unless he thought the parties guilty: If the Judge and the Law Officer or Assessors agree with the Magistrate's judgment, this, I think, is sufficient for the ends of justice, and the defendant would not be able to complain that he had been condemned on the hasty decision of one party.

3. I also think that some record of the proceedings should be kept, but not in the cumbrous form it is under the present system; it should consist in cases instituted before the Magistrate, merely of the petition, the evidence of the plaintiff, his witnesses, the defence of the other parties and other witnesses, and all matters not connected with the case, should not be taken down, only the important parts of what the parties were eye-witnesses to, all the papers connected with the subpœnas, &c. &c., the measures taken to secure the appearance of witnesses or defendants unwilling to attend, these should all be kept separate, and when the proceedings are called for on appeal, instead of the present bulky misil, a few pas-

sages would be all that would have to be produced. In cases instituted at the Thannah, a short narrative of the measures taken by the Darogah with the witnesses examined, would be added to the evidence of the parties taken afterwards before the Magistrate. To do away with records altogether, would be open to the objections I mentioned, when considering the subject of Appeals.

4. Any great reduction in the establishment of Mohurrirs would impede the business of the Court, and I am afraid, that some delays, that have been complained of, would again be caused. In Patna, attached to the Magistrate's Court, there are only 15 officers; any material reduction amongst these would leave the Magistrate to do all the work himself; it would be a harsh measure to turn off so many dependants of Government, who may have been employed many years in their present situations, and who would find it difficult to get any other means of supporting themselves: as the present Omlah die off, or are promoted or dismissed, a gradual reduction might be made, but it should not be to such an extent as to retard the transaction of business; the pay of the higher grade of Omlah is indeed small and quite inadequate to the responsibility and labour required of them; higher salaries would tend much to secure greater honesty and respectability, and the people, in general, would have less repugnance in appearing before our Courts.

I have the honor to be,

Sir,

Your most obedient servant,

J. E. S. LILLIE,

Officiating Magistrate.

Patna Magistracy, the 2nd May, 1845.

No. 133.

To the Deputy Register of the Nizamut Adawlut,

Fort William.

Sir,

I had the honor on the 24th ultimo, to receive the Sudder Nizamut's Circular, No. 9, of the 22d idem, calling for a report on the suggestions made by the Government of Bengal for simplifying the proceedings of the Magistrates and the Police.

2. I consider the opinion of the Right Hon'ble the Governor of Bengal, that such simplification as is desirable must be preceded by a revision of the present system of appeal to be most correct, no two men, as is abundantly shown by the printed reports of the Sudder Dewanny and Nizamut Adawlut, can be expected always to agree in their view of the same transaction, and, as it is obvious, that the Magistrate, trying a Criminal case with the parties before him, must be better able to form a just estimation of the value of the evidence offered than the Judge receiving the appeal, who sees merely the record of the case: justice requires that the decision of the Magistrate should not be lightly set aside. The illegality of the order should alone warrant its reversal. The course so often followed by the Judges of upsetting the orders of the Magistrate, simply because they differ from him in estimating the value of the evidence brought forward in the case, and, without any attempt to show that the proceedings of the Magistrate have been injudicious or illegal, produces nothing but mischief. The persons sentenced by the Magistrate, appeal, because they know that it is very much a matter of chance whether they succeed or not, and the Magistrate thinks little of his decisions being reversed by his superior, when no illegality is stated as the ground of reversal, because he feels that a third party would be as likely to agree with himself as with the Judge. But whatever the Magistrates may think of the effect of the present system, I am satisfied that the natives view it merely as affording criminals a capital chance of escaping punishment altogether; and this chance has been vastly increased by Act XXXI. of 1841, which was intended to mend the matter. Previous to the passing of that Act, a

party, improperly acquitted by the subordinate Officer, could be apprehended and punished by the order of the superior authority. Now a criminal acquitted through the ignorance, carelessness or corruption of the Magistrate or other Officer trying him, gets off altogether, and, as it is unreasonable to suppose that such cases will not occasionally though very rarely occur, justice ought not when they may be discovered to be barred by a legal enactment: then again formerly the punishment awarded to criminals, could be increased as well as diminished on appeal, and this circumstance acted as a great check on Appeals; now, on the contrary, a prisoner legally sentenced has nothing whatever to fear. He has a very good chance of escape, and his punishment cannot be increased by appealing. Act XXXI. of 1841, was intended to lessen the number of appeals, but by prescribing no punishment for vexatious appeals, and by taking from the Officers hearing the appeal, all power of increasing the punishment, even when such additional punishment might appear proper, it has had no other effect, than to cause nine prisoners out of ten to appeal against the orders passed in their cases, for almost all prisoners now do appeal, excepting the very few who are deprived of the power from being sentenced by the Magistrate himself in petty cases, which, where there are Assistants or Native Officers, are always tried by these subordinate authorities, and then become appealable to the Magistrate himself.

3. With regard to the proceedings in the Magistrate's Office, I am of opinion that they cannot be very much abbreviated, unless the Government are prepared to give the Magistrate absolute authority in his own office, and to be satisfied with any explanation he may offer in any case when called upon. It must be borne in mind that in this country any malicious party can procure as many witnesses as he desires to swear to any charges however extravagant and false, which he may make against a Government servant or any one else; it must also be recollected that even anonymous charges, published in the newspapers, subject Officers at present to the degradation of being called on for explanation of their supposed misconduct; and under these circumstances no man's character will be safe, who has

not, when charged with misconduct on any particular occasion, the case to refer to, in which the evidence of the witnesses examined has been fully and carefully recorded; if, when the parties are all assembled, the Magistrate were merely to question them on the matter in dispute, and to record his opinion and decision in a brief roobukarry, he would be entirely at the mercy of the witnesses themselves in any subsequent investigation; they might, and on the least inducement, would, deny all that they had said before; they do so even now repeatedly when examined by the Sessions Judges in cases committed by the Magistrate for trial to the Sessions. But independent of this consideration, the parties to cases can hardly ever be collected together unless they all happen to live close to the Cutcherry. Some of the witnesses come in one day and some another; the defendants, if numerous, are seldom caught and brought to trial without some delay, and then again after they have been secured, the witnesses to the defence have to be found and brought to Court; if the case be delayed until all can be examined at once, much inconvenience will be sustained by most concerned in it, and if not so delayed, the evidence must be fully recorded to enable the Magistrate to refer to it with confidence, when the case is finally tried and disposed of.

4. The fraud and rascality so constantly practised by the natives at present, which, in my opinion, make it necessary that the evidence should be fully taken before the Magistrates, have led to the adoption of endless checks in every department of business, and thus rendered a large establishment absolutely necessary. Half the time of the Omlah is taken up in keeping registers and making copies of various papers, although in every office in the country they are assisted by men, who cheerfully work in the expectation of succeeding to any appointment which may become vacant; thus for example, during the two last years, 27,186 perwannahs were issued from this office, every one of which had to be first copied; in some trifling respects this may be amended; when witnesses and defendants are sent for, the first perwannah might contain instructions to the Darogah as to the several steps to be taken to secure their attendance,

in the event of their absence, or of their absconding, or refusing to attend; in the same way on receiving a report from the Darogah, respecting unclaimed property, the first perwannah might point out the several processes to be adopted until the final sale or despatch of the property to the Sudder Station. The Record Office too might be kept in better order by destroying, after the elapse of one or two years, all petty cases finally disposed of, all useless miscellaneous papers received from the Thannahs, roznamchas, pay receipts, &c.

5. With regard to the proposed plan, by which the presiding Officer in each Court would record in English, a sufficient memorandum of each case tried, I am of opinion, that it would not answer; it might when English comes to be generally understood by the people, and where the work is light, but I am satisfied that, in most offices, in this for instance, it would tend to retard the despatch of work. A Magistrate is occupied a considerable time every day in merely signing papers; these are often unavoidably brought to him at all hours, and can be signed while he is dictating roobukaries in cases before him as well as at any other time; in all final proceedings too of importance, reference must often be made to dates, and looking for these would occupy time, which a Magistrate, in a heavy district, is in every way obliged to save. I think the course which I follow, and which, I believe, most Magistrates follow, is about as good a one as can be adopted. I dictate in open Court, before the parties concerned, every decision myself, stating the reasons which guide me, and these are at once taken down and entered in the order book, and signed by myself; from this entry a roobukarry, in as brief a form as possible, is then drawn out in the office, and signed by me when prepared, being written in the native language; copies can be taken by the parties concerned, who would not understand the proceedings if drawn out in English, and even in trifling cases these copies are much sought after by the people, who are as much interested in their own petty disputes as greater men are by decisions in more important cases.

6. But though, I think the proceedings in the Magistrate's office cannot be much shortened, and that few of the checks now used can

be done away with, unless the Magistrate exercise sole and complete controul over his Omlah, having the power of discharging them when *morally* satisfied of their misconduct, instead of waiting, as he must now do, until he has such clear *legal* proof as may satisfy those to whom appeals can be preferred, and who can know little or anything of their individual character, I am of opinion, that the proceedings of the Police may with great advantage be considerably abridged. Notices of expected disputes, petitions for assistance in cases of attachment of property for rent, or in trifling cases not cognizable by the Police, might be forwarded to the Magistrate without any report; the Darogah merely noting on the back of each the orders given by him, entry as usual being made in the roznamcha. The original hookumnamah of the Darogah deputing a burkandaze to inquire into any case, might be forwarded without report to the Magistrate with the return on the back of it, reports being only sent in serious cases.

7. In no other cases than those in which life is lost would I allow the Darogahs to take the evidence of any witnesses whatever, and in these cases the evidence should be recorded as briefly as possible; the witnesses being invariably sent in with a short report within one day from their first appearance before the Darogah; in all other cases I would have the Darogah merely send in a list of the witnesses questioned by him, with a brief report to be signed by those witnesses examined, who can write their own names. I would particularly insist on the witnesses being invariably forwarded at once to the Magistrate, because it is the time occupied in taking their evidence, and making the formal inquiry into cases, which gives the Darogah such power at present. In cases too for the possession of disputed lands or crops, I would not even allow the Darogah to give any opinion at all in the matter; when deputed to the spot, he should merely ascertain what lands or crops are contested, so as on receiving the final orders, to be able to give possession without difficulty. He should send in a list of the witnesses of each party with a map, when called for, signed by the disputants, and nothing more; in a heavy case of this description, the Darogah's favorable opinion is always coveted, and is never

given without a consideration—"*jiska pisa uska neel,*" is a short phrase, well understood in every indigo district.

8. The reply of the defendants apprehended should be taken as shortly as possible, but even when they confess I would not have it necessarily taken before witnesses, unless parties on the spot able to write, volunteer to attest the confession, and to come to Court to prove it; at present delay is always caused by the search for witnesses, and force is invariably and unavoidably used to compel their attendance; the rich pay to be excused, and the poor, whose absence from home is of most consequence, and so often ruinous to their families, are alone sent in, and what good is gained to compensate for the inconvenience sustained by the community in this way? If the criminals confess before the Magistrate, the evidence of the witnesses to the mofussil confession may surely be dispensed with, and if they deny their mofussil confession, what Magistrate or Judge places much reliance on the mofussil confession alone?

9. I have expressed my opinion that, as suggested by the Right Honorable the Governor of Bengal, appeals should only be received upon the ground of the illegality of the sentence passed by the Magistrate, and that the proceedings in the Magistrate's Office cannot be very much simplified unless the Magistrate be entirely unfettered in the management of his subordinates. I certainly consider the present system of civil and criminal law to be far too refined for the people, and had the Government to begin again, I believe a much better one might be introduced. I think, however, that in the districts long subject to regulation law, it will be better to look for improvement from the improved habits of the people, than to attempt it by abolishing almost all the rules and regulations by which the civil and criminal authorities are now bound to act, for by this plan alone do I believe that more justice could be given to the people than they now enjoy. Precise rules and regulations are very well in a country in which the vast majority of the people are honest, but in this country they are only so many aids to the dishonest. Tied down by rules, and unable to act entirely, according to his own judgment, the ablest functionary is often helpless; I have often discussed this sub-

ject with Native Judicial Officers and Mooktears, who are necessarily acquainted with the circumstances of almost every case brought forward in the Courts, and more than one Moonsiff of high character has assured me that, to the best of his belief, more than half his decisions in cases of actions for money said to have been advanced on bonds are unjust, from the necessity of his deciding according to the evidence in the case, any amount of which the rich suitor can procure against the poorer defendant. What stronger proof indeed can there be of the rascality practised by the people, and of the decisions in our Courts being often unjust, though strictly in accordance with the evidence, than the fact that old damaged stamp paper is valued, and bears a premium high in proportion to its worthlessness for all honest purposes. It would not become me here to suggest what I may conceive to be an amendment for such a state of things in civil matters, but as the same cause, viz. perjured evidence, leads to equal injustice in the Courts of the Magistrates, I am decidedly of opinion, that perjury and prevarication in witnesses should be punished by Magistrates, and that no appeal should be received against the orders passed in these cases. Serious false complaints ought also to be treated with much more severity than they can now be visited. Men who conspire together and falsely accuse their enemies of the heaviest crimes, certainly deserve more punishment than can at present be awarded to false complainants. I would have the Magistrates empowered to sentence all parties convicted of bringing malicious and serious charges against individuals, as well as the witnesses convicted of perjury, to any imprisonment with labour redeemable by fine, not exceeding three years. Labour too redeemable by fine ought also, I think, to be ordered in every case in which simple imprisonment can now only be given. Our gaols are filled with persons of the labouring class sentenced from necessity to imprisonment without labour in petty cases of assault and other misdemeanours. Officers, exercising special powers, ought also, I think, to be competent to dispose of cases under Regulation IV. of 1840, as well as to administer corporal punishment in cases of theft. Unless Officers be so empowered, the Deputy Magistrates

and Assistants to be stationed in the Mofussil, not vested with the full powers of a Magistrate, will be of only half the use they might be.

I have the honor to be,
Sir,
Your most obedient servant,
HENRY ATHERTON,
Joint Magistrate.

Pubna, Foujdaree Adawlut,
The 24th April, 1845.

No. 3.

To W. KIRKPATRICK, ESQ.,
Deputy Register, Nizamut Adawlut,
Fort William.

SIR,

I have the honor to acknowledge the receipt of your letter of the 28th February, No. 9, with its enclosure, No. 319, of the 19th idem, from the Secretary of the Bengal Government, calling for a report of my sentiments, on the suggestions contained therein, for simplifying the proceedings of the Magistrates and Police. The proceedings of the Police have already been considerably shortened and improved. A short statement of the plaintiff's case, if the facts proved (the names of the witnesses written in the margin,) and the defendant's answer is, in most cases, amply sufficient. I would abolish the system of the administration of oaths by Darogahs to plaintiffs, and of compelling a number of individuals to attest the *sooruthauls* and other papers. The oath, although stated by the Darogah to have been given by him, is often omitted, there is no doubt, and, even if truly administered, no Magistrate believes the statement one iota more on that account. The practice of requiring many persons to attest the proceedings of the Police during an investigation, is one great handle for oppression and extortion; let the heads of the village, where the crime occurs, or the accused resides, according to circum-

stances, be present, and let their names be mentioned by the Darogah; but they ought never to be sent in as witnesses to the proceedings, except when specially summoned by the Magistrate. I would make no exception even regarding the witnesses to a Thannah confession, for, however well attested, it is seldom believed in the Magistrates', and never in the Sessions' Court, unless repeated by the prisoner himself.

2. I think the system of searching every one's house, whom the plaintiff chooses to suspect as having had a hand in robbing him, ought to be forbidden; let the sufferer name at once the persons whom he suspects, and his reasons for so doing, and let their houses be searched, but no others, unless good grounds for so doing should be afforded in the course of investigation, such as being named in the confession of an accomplice, &c. &c. The Darogah ought to be entrusted with the power of searching the house of any notorious bad character, or receiver of stolen goods, on his own responsibility; at present he does as he pleases in that way, and escapes punishment by having taken a writing from the plaintiff, requesting the search. It would be attended with great advantage if the Court were to call the attention of the Magisterial Officers to the time generally occupied by the Police in an investigation; constant scrutiny on this point is most useful, and a Police Officer, who, after repeated warning, should persist in his dilatory ways under pretence of a thorough enquiry, should at once be dismissed the service; a few questions by the Magistrate to the parties soon elicit an account of the Mofussil proceedings, and act as an excellent check on false returns, particularly as regards dates.

3. If the salaries of the lower Police Officers are to be increased, the most economical plan would be to abolish the Jemadarships, and make a new grade, that of Naib Darogah, with a salary of 20 or 25 Rs. per mensem, and to leave the Mohurrirs, as they are, strictly forbidding them to have any thing to do with the investigation of cases, and confining them to keep the Thannah books, preparing the Darogah's and Naib Darogah's reports, when required, filling up Returns, &c. The Jemadarships are looked down upon by the class

of natives, who eagerly accept the appointment of Mohurrir or Darogah, and the consequence is, that the Jemadars now are in general, an uneducated thick-headed class; style them Naib Darogahs, and better men would soon be found. The ablest and best behaved Burkundauze might be called Jemadar, and his duties would be to set the watches, take charge of the malkhânna, prisoners, &c. A considerable sum might, I am inclined to believe, be procured for these purposes, and for increasing the Burkundauzes' pay by a re-distribution of the Thannah Burkundauzes throughout Bengal. Let a list of Burkundauzes of each Thannah, and a statement for the last few years of cases investigated, and persons apprehended and sent in by the Police therein be called for; let an average be struck of so much work to so many Burkundauzes, and, I think, a considerable surplus will remain even after filling up those Thannahs, where there was before a deficiency. I would also put a stop to the employment of Police in carrying money, letters, &c. for the Civil Courts.

4. With regard to the procedure before Magistrates and other Judicial Officers, there is no doubt it might be greatly simplified and improved by doing away with the present practice of recording evidence, &c. This practice is one of the greatest evils of our Courts, no Officer can get through his work now without more than one Mohurrir writing depositions, while he himself is otherwise employed, and it is certain that great part of the value of the evidence is lost in this way, even supposing that the Mohurrir adheres *literally* to what the witness says, which he very seldom does.

5. The abolition of the present system of record would conduce directly to justice, by reducing the expense of the Courts to the people, by shortening the period now required for the decision of a case, and by enabling the Magistrate to get the full value of the evidence brought forward, and to elicit the truth sooner than can now be done, when every question has to be taken down, and when the substantial part of the story has already been written for the witness. It would, no doubt, be attended with its inconveniences also, there would be greater difficulty perhaps in checking perjury, as it would certainly be more difficult to convict for that crime, it would

render appeals, as now conducted, almost impossible, and it might lead to a careless method of deciding cases.

6. As to the first objection, I believe, perjury could scarcely flourish more, or be less subject to punishment than it is now, to check it by laws, may be said to be impossible, that must be left to education.

7. With regard to the second objection, although in this country one becomes so accustomed to appeals that the denial of them appears almost like a denial of justice; yet, I am inclined to believe, their abolition would be attended with more good than harm. 1st. Because, without it, the great improvement of shortening the procedure could not be carried out. 2ndly. Because under the present system, great hardship (perhaps as much as it is intended to remedy) is caused to the poorer classes, and extra and unnecessary labour to the Judicial Officers; besides these reasons, I verily believe, that with a strict superintendence by means of registers, local visits, and the right still left to the injured of bringing these cases to the notice of the higher authorities, and what, with the feeling inherent it is to be expected in all who may be trusted by Government of endeavouring the more to deserve confidence the more it is placed in them; I say, I believe, that the administration of justice would be fully as equitable under the proposed as under the present system.

8. Another point might, I think, be altered with advantage in the procedure of Magistrates; it is now the practice under Regulations IX. of 1793 and VI. of 1803, on a plaint being presented, to subpœna the witnesses, and, on their evidence being taken, they are dismissed, and if the facts charged are proved, the defendant is summoned. He appears some weeks afterwards, and how is the Officer on the Bench to recollect the particulars of the evidence against him after such a length of time passed in trying hundreds, perhaps, of cases of exactly the same description. I would propose, that on a petition being presented, the plaintiff be closely questioned, and if his story seems a true one, that both the witnesses and the accused be sent for at once, or the accused only according to the nature of the case. In a great part of the petty cases, the latter would

be quite sufficient to enable the Officer to come to a decision, and where it was not, he would at all events be able to send for such witnesses as he considered necessary, instead of having to listen to a set of rascals, who, he suspects, have no more been witnesses to the circumstances than he himself has.

9. If Appeals are done away with, it would appear inconsistent not to entrust the Magistrates with the decision of many cases, which are now committed to the Sessions. Burglaries above 100 rupees, thefts above 300, felonies, in which Chowkeedars or other Police Officers are concerned, might surely be entrusted to the Magistrate to punish with imprisonment not exceeding five years. Even petty dacoities, and the less heinous kinds of homicide, might advantageously be left to the decision of the Magistrate; such a change would lead to an apparent increase of crime at first, but, as certainly, in the end, to a real decrease.

10. From paragraph 14, of the letter under reply, it would appear that it is in contemplation to increase the salaries of the Sheristadars; this has become necessary since the increase of Darogahs' pay. Few Sheristadars receive more than the lowest grade of Darogah, while their office has a great deal of responsibility attached to it.

I have the honor to be,

Sir,

Your most obedient servant,

G. U. YULE,

Offg. Joint Magistrate.

Zillah Bograh, Fowzdarry Adawlut,
The 26th April, 1845.

No. 118.

FROM THE JOINT MAGISTRATE OF BARASUT,
TO B. J. COLVIN, ESQ.,
Officiating Register of the Court of the
Sudder Nizamut Adawlut,
Fort William.

Dated Barasut, 18th April, 1845.

SIR,

I have the honor to acknowledge the receipt of your letter, Circular No. 9, dated 22d March, 1845, with its enclosures, requesting the sentiments of the Joint Magistrate of Barasut, on the suggestions contained in Mr. Secretary Halliday's letter, No. 319, of the 19th February, 1845, within one month.

2. The simplification of the proceedings of the Magistrate's Court and of the Police, is dependent on the abolition of the privilege of Appeal. It is requisite therefore to consider the expediency of this last step before enquiring into the desirableness of the former; should this last step be deemed necessary, the first will follow as a matter of course; should the privilege of appeal be retained, it will be a question how far the proceedings of the Magistrate's Court and the Police may be amended, so as to unite on the face of the record, brevity with clearness.

3. It may perhaps be asserted generally that in all systems, denying the privilege of appeal, there should be on the part of the Judges, 1st. Considerable legal attainments conjoined with great knowledge of human nature in general, and especially of the character of the people amongst whom they have to administer justice; and secondly, the absence of every official influence likely to cause disturbance, or fluctuation in the mind of the Judicial authority.

4. It is further submitted, that both the conditions above-mentioned should be realized together, before the finality of the orders of a Court of first instance can work out other results than injustice; the absence of influencing circumstances, if unattended with the legal knowledge, will not save a Judge from committing errors of law; whereas, the highest legal acquirements, if accompanied by influ-

ences, disturbing the judgment, will be no safeguard against the commissal of errors in matters of fact.

5. I do not presume to say, whether the first condition is realized in the present state of things or not; I may venture to assert that the second is not; the union in the same person of the offices of thief-catcher and thief-trier, (offices requiring very different habits of mind), gives a bias to the judgment of the Magistrate unfavourable to persons apprehended through the instrumentality of his own Police, when on their trial; it is not necessary that the Magistrates should be aware of the bias; it is not, however, the less real or less prejudicial to justice by reason of this unconsciousness.

6. In a new state of things then it would seem that the two branches of a Magistrate's present duties, viz. the executive and the judicial, should be kept separate; and in such a case, the privilege of appeal might probably be withheld entirely except on the ground of illegality potent on the record; if, however, the circumstances of this country are such as not to allow of the separation of the duties noted above, it would be only consonant with justice, keeping in mind what has been remarked in the 3d, 4th, and 5th paragraphs of this communication, to allow all parties convicted by the Joint Magistrate, of offences of which the Police take cognizance, and in the bringing home of which to the accused, the Magistrate, as head of the Police, is interested, the power of appealing to one higher tribunal; both on questions of law and of fact; whereas, in all other cases, the power of appeal should be allowed only against errors in points of law.

7. With deference, moreover, it is submitted that the power of superintendence, which it is intended under the proposed plan, that the Superior Courts should exercise, implies that the judgment of the inferior tribunals will not be above the necessity of strict control; if so, should not the Court, on the discovery of wrong, be able to apply the remedy? Should it be from any circumstances inexpedient to allow the application of the remedy to all cases without exception, the Court should certainly have the power of correcting misdecisions arising from the anomalous position of the Government servants.

8. It follows from what has been said above, that in all those cases, in which the Police are concerned, the proceedings should not be abbreviated to the detriment of the clearness of the record, which should contain every thing necessary for the information of the Appellate Court, and be stripped of all surplusage. I am of opinion that under the rules adopted in the Court's Circular, No. 13, dated 16th June 1843, the proceedings both in the Magistrate's Court and in the Mofussil have been curtailed as far as they can advantageously be: cases, of which the Police have not cognizance, might with great advantage be curtailed in the mode suggested in the 6th paragraph of Mr. Halliday's letter, No. 319, dated 19th February 1845.

I have the honor to be,
Sir,
Your most obedient servant,
C. B. TREVOR,
Joint Magistrate.

No. 22.

To W. KIRKPATRICK, ESQ.,
Deputy Register in the Court of Nizamut Adawlut,
Fort William.

SIR,

I have the honor to acknowledge the receipt of your letter, No. 9, of the 28th February last, received on the 24th March, calling upon me to report on the suggestions contained in Mr. Secretary Halliday's letter for simplifying the proceedings before the Magistrate and Police.

2. The rule alluded to, and contained in the Court's Circular of the 16th June 1843, has greatly reduced the latter, as far as I can judge from the cases committed to the Sessions, and some that have come before me in appeal, and the same rule has much abridged the proceeding held on committing a prisoner, which used to be a most tedious and redundant one, entering often into details quite

irrelevant to the case, and referring to matters, which could not be supported by evidence.

3. Very few petty assaults, thefts, and trifling misdemeanors are appealed to the Sessions Court, in most of them the sentences are not appealable, and, I think, all recorded evidence, in such cases, might safely be dispensed with, or limited to the examination of the prosecutor, and the plea of the defendant, and of the evidence a brief summary be given in the final proceedings to the effect—" that the witness (in the margin) proved the theft," " discovery of the property," or " apprehension of the prisoner with the stolen property on him," and in cases of assault or misdemeanor, " proved the assault," or offence charged, and for the defence—" that they proved, or failed to prove, the *alibi*," or whatever defence was set up by the accused.

4. In *all cases*, whether crimes or misdemeanors, if the accused pleaded " guilty" before the Magistrate *in open Court*, the plea should be entered up, and if the Magistrate was competent to dispose of the case without commitment, it should be left optional with him to examine any of the witnesses to the fact, or not to pass sentence at once on the prisoner, this would make it necessary to rescind, or amend, Construction No. 650, and which now obliges Magistrates to take all the evidence in such cases, when any Court in England would dispense with it altogether.

5. With regard to cases coming under the provisions of Regulation XII. 1818, and others empowering the Magistrate or Joint Magistrate to sentence beyond six months' imprisonment, I think it would be better that the evidence to the facts should be recorded for this reason. All the offenders may not be at once apprehended, or it may turn out, from a Chowkeedar being concerned or some other cause, that the prisoners should be committed, and therefore having the evidence on record would enable the Magistrate to make the commitment at once, and in the case of a person apprehended *long after* the case was first brought up, there would be the recorded evidence ready, and if the witness was dead, or not to be found, it would be good evidence for conviction, when the prisoner's identity was proved.

6. In carrying out the above provisions, I would suggest modifying the Circulars alluded to in the margin, and rescinding Clause 6, Section 2, Regulation III. of 1812, prohibiting Magistrate issuing any process till the prosecutor's complaint is proved by witnesses.

No. 19, of the 3d April 1829.

No. 63, of the 3d Dec. 1830.

Vol. II. B. M. P. Edition.

7. This I consider (to use the words of another Sessions Judge in a lithographed communication lately circulated) "a hole-and-corner proceeding."

8. In very few instances are the witnesses again summoned and confronted with the accused, but he is convicted merely on this *exparte* (but recorded) evidence thus given, and by whom he cannot have any knowledge. Now if evidence is not to be recorded, the witnesses *must* be examined in the presence of the accused a second time, and if their statements, or second evidence, differs from what they gave first, what record (except his note book) has the Magistrate to detect this? or how could the witness be proceeded against for perjury?

9. Let every person be allowed to accuse whom he pleases, and with the summons for the witnesses, one should go out for the defendant, fixing a day for his attendance, it would be optional for him to attend or not, but after the witnesses are examined, and on the charge being proved, the Magistrate should be authorized to issue a warrant for his arrest, if the defendant had not attended, and I would do away with all that troublesome machinery of Ishtihars—proof of their service; and that the period fixed in them for attendance had expired before a warrant of arrest was issued, and which, in my opinion, is one of the principal causes of cases being so long pending in the Magistrate's Court.

10. Instead of troubling the Court with long extracts, I would beg, with advertence to the subject discussed in the four preceding paragraphs, to refer them to Bentham's Rationale of Evidence, vol. 1, page 431, and vol. 5, page 640, *et infra;* and I am confident that learned Jurist would have objected to the plan hitherto pursued in this country, of taking proof of an offence, before the accused was

summoned, and then often disposing of the case without again examining the witnesses in his presence, when he was summoned and attended, which, of course, is doubly harassing to the witnesses themselves, and an extra expence to prosecutors, who have to diet them, and who are *very seldom* reimbursed their expenses, or the costs they have incurred.

11. With regard to the Sessions Court too, I think the recorded evidence might be greatly abridged.

12. Except trials for dacoity, all cases are heard before a Law Officer, Assessors or a Jury, all these do (or ought to) take down an abstract of the evidence, and it is often idem, or ایضا after the first witness to the discovery of property and its recognition.

13. Now on these points, as well as to a prisoner's defence, when an *alibi*, or any other, I think it would be sufficient to put down, "that A B C, on a solemn declaration, being questioned, deposed to the finding of such property in the house of such a prisoner," (when there is more than one, the witnesses to the finding to be stated separately) or "recognised the property as belonging to the prosecutor," or "deposed to the prisoner being at such a place on the night of the offence being committed, and which is so many coss from the village where the prosecutor resided," or "that the prisoner was sick in bed on the night of the occurrence, and, in the opinion of the deponents, unable to move about," or "that he was always before considered a good character in the village, and had never been apprehended before on any charge."

14. This would greatly simplify the case, and would be *still* a very fair record of secondary evidence, and, in the event of an appeal to the Sudder Court, occupy them a much shorter time in revising the proceedings.

15. I do not know what practice other Session Judges may adopt, but I invariably take the evidence to the defence of each prisoner, after his defence, so the case, as regards him, is completed, and if the suggestions above hinted were adopted, would reduce, what now occupies some sheets of paper, to one or two at most, for the defence of a prisoner: and in a heavy dacoity this would be a great

saving of time, but if all the prisoners are *first* called upon to make their defence, and *then* the witnesses in the calendar are examined, the above plan cannot be followed, and the evidence would have to be taken down in greater detail.

16. In *all cases* when a prisoner pleaded guilty in the Sessions Court, that should be entered up, and it left optional with the presiding Judge to take evidence or not in cases not referable to the Nizamut Adawlut, but in some of the latter even it might be dispensed with.

17. I recollect when Assistant at Moorshedabad, many years ago, a heavy case of dacoity, in which all the prisoners confessed before the Police, the Magistrate, and the Court of Circuit, was returned by the Nizamut Adawlut, because the Circuit Judge had not taken the evidence for the prosecution.

18. At home, even in cases of murder, no evidence is taken, and in support of this assertion, I may allude to the recent one published of a woman, who poisoned her children for the burial money, and who was convicted and sentenced capitally, but no evidence was taken before the Court to substantiate the charge after her pleading guilty.

19. With regard to Appeals, they might, with every safety, be greatly reduced, but if no record is to be retained, I think *one penal offence* must be struck out of the Criminal Regulations.

20. I allude to punishing persons for false complaints, requisite no doubt from the state of the country, but which, *of all others*, entitles the party punished to an appeal, for he is not brought before the Magisterial Courts as an offender against the laws, but for an attempt to get others punished for an infraction of the law, or breach of the peace.

21. In several cases that have come before me in appeal of this kind, I have differed with the Magistrate, Joint Magistrate and Deputy Magistrate as to the case being false; the charge is *often not proved*, but it does not follow, it is a false one, and the Deputy Magistrate of Pubnah in some cases punished, not only the prosecutor, but witnesses to the charge, and the latter being no way liable to punishment by a Magistrate, I, of course, reversed his order.

22. The Appellate Court has not the parties before it, but only the recorded depositions, and it may *sometimes* be misled by them in supposing a case *not proved*, rather than FALSE, when circumstances transpired *before* the Court of primary jurisdiction, leaving no doubt in the mind of the Magistrate, or presiding officer, who punished the prosecutor for a false complaint.

23. This, let me remark, is a case, which will turn upon evidence, and not on a question of law, and not to allow a party an Appeal (if the rule to punish for false complaint is left as it is,) would, in my humble opinion, be as great an injustice as depriving the Queen's Court of the right to issue a writ of "habeas corpus."

24. With regard to what is stated in the 5th, 6th, and 7th paragraphs of Mr. Secretary Halliday's letter, no two opinions can be entertained.

25. Adverting to the 8th paragraph, I may state that of 83 cases, tried by me in the past year here and at Pubnah, of 179 persons convicted, 112 appealed in 26 cases,* and though only 7 prisoners were acquitted by the Superior Court (evincing I should hope a sound discretion,) still this must have entailed no small trouble on the Judges, who revised the proceedings, and a great deal on my English writer to copy the abstracts, &c. required in each case by the Nizamut Adawlut, and the dâk, no doubt, was delayed by these very heavy dispatches or proceedings.

* Only six cases were referred in 1844, for this jurisdiction and Pubnah together.

26. With regard to paragraphs 10 to 13, there can be no doubt that the plan proposed in paragraph 11 is the best, and judging of the Deputy Magistrate of Pubnah, Mr. Barry, the best results may be expected from his deputation to Serajgunj, and by Mr. E. Jackson's to Nattore, the latter has three Thannahs of this Magistracy, placed under him, and the former, two of Pubnah, one (Serajgunj) of Mymensingh, and one of Bograh.

27. There can be no doubt there are in most offices under-paid Mohurrirs, who, from being so, are greedy to get what will square their expenses; how they are paid here or at Pubnah I know not, but in the Judge's office I found several, who were inadequately

so, and on the occasion of two vacancies, the salary was distributed (with the sanction of Government) to increase the pay of some others.

28. An increase to the salaries of the Sherishtadars is also I think very desirable. The Sherishtadar of the Foujdarry Court here only receives 60 rupees, and at Pubnah (a much more laborious office,) the Sherishtadar only gets 40 rupees. This Officer was formerly a Darogah, and the probabilities are would have been a first grade one, on an allowance of 100 rupees, had he remained attached to the Police, and, as it is, *every* Darogah receives more than he does, though he has, in a great measure, the supervision of their proceedings, and has to bring to the notice of the Joint Magistrate any neglect or dereliction of duty on their part.

29. Trusting the Court will excuse the delay in replying to their call,

I have the honor to be,
Sir,
Your most obedient servant,
G. C. CHEAP,
Sessions Judge.

Sessions Court, Zillah Rajshahye,
The 2d May, 1845.

No. 84.

To B. J. COLVIN, ESQ.,
Offg. Register of the Court of Nizamut Adawlut,
Fort William.

SIR,

Having given the most careful consideration to the subject of the Right Hon'ble the Governor's opinions and suggestions as contained in Mr. Secretary Halliday's letter, No. 319, of the 19th February last, which accompanied the Court's Circular letter No. 9, dated the 28th of the same month, I now respectfully beg to be allowed to submit the following observations on the proposed reforms in the Administration of Criminal Justice, and the Simplification of Magisterial and Police proceedings.

2. Were a Civil and Session Judge to consult only his own case and relief from labor and responsibility in reporting on so much of the important subject under consideration as relates to the reduction of the number of appeals, he would at once be tempted to concur in their abolition to the extent proposed. But His Excellency having done us the honor to call for a report of our sentiments on the question, I feel that we are in duty bound most respectfully to state our opinions with all candour and plainness, whether the arguments and reasoning, by which they are supported, appear cogent or otherwise, and carry conviction or the reverse.

3. I would accordingly premise that in offering the remarks which follow, I entirely disclaim all idea or intention of casting a slur or detracting from the acknowledged merits, the admitted general efficiency, and the deservedly high character of the honorable service to which I belong, and that I simply record the sentiments hereinafter expressed with an honest conviction that they are in accordance with the best interest and welfare of our native fellow subjects.

4. Entirely concurring in opinion with His Honor the Governor as to the advantage of simplifying as far as possible the proceedings of the Magistrates and Police, and the expediency of doing away with appeals from the decisions of the Magistrates in certain cases of a comparatively trifling and minor character, I would beg leave, first, to record with deference the reasons which appear to me to render it inexpedient and undesirable to enchance the final judicial powers of the magistracy to any very considerable extent beyond the limitation; I shall hereafter, secondly, propose as the maximum of final power, which might, in my judgment, be entrusted to that class of Officers with advantage to the administration of justice, and without danger to the general welfare and happiness of the people.

5. It will not, I think, be denied that from the constitution of the Civil Service, the Officers composing the Magistracy in this country, are installed into their very arduous and responsible functions, and which is their first exercise of independent authority, at an age comparatively early to be entrusted with very considerable power. This has necessarily been more especially the case of late

years, since the same or rather greater Magisterial power has come to be entrusted to the juniors of the service, which used formerly to be wielded, but with the same restrictions and checks by appeal and supervision upon its abuse, by men of much maturer age and greater experience; first, when the offices of Judge and Magistrate were held by the same Officer, afterwards, when the Magistrates had no other duties, and of later years, before the present arrangement, when the offices of Collector and Magistrate were united in the person of one and the same functionary.

6. It will also, I think, be admitted that our zillahs or magisterial jurisdictions are most of them extremely large, and many of them with populations in proportion. The area for instance of this district is stated by the late Magistrate, Mr. Drummond, in his past year's Annual Report, to comprise 5,630 square miles, with a computed population of 1,70,000 inhabitants. Within the limits of these extensive circles, every individual is subject in respect of criminal matters to the authority, with it is true subordinate co-adjuvancy, but still the undivided authority of a single Magistrate, who, presiding in the chief executive Criminal Court of the district, superintends all the inferior officers, covenanted and uncovenanted, of every grade in the Magistracy, besides controlling the whole Police force of the zillah. To this Officer are confided the safety of the lives and the protection of the property of large masses of the people, and their credit, characters and fortunes, in short their general happiness and welfare are materially influenced, directly or indirectly, for good or evil, by his character and opinions; by his temper, disposition and pursuits, and by his general official conduct and efficiency.

7. Practically this concentration of authority and primary jurisdiction will, to a certain extent, be modified by the contemplated location of Deputy Magistrates to be placed in charge of a circle of Thannahs in the interior of the several Districts, an arrangement, which, it cannot be doubted, will be attended with the happiest results to the community at large. But as these Officers are still to be under the superintendence and subordinate to the Magistrate; it is clear that the powers of the two functionaries cannot be co-equal; indeed the question propounded in the 6th para. of Mr. Secretary Halliday's

letter, in regard to some limitation to the privilege of appeals from the Mofussil Deputy to the Sudder Magistrate, shows at once that any such equality of authority is not intended. The new system then will provide more functionaries with different degrees of power, and, of course, of fitness and experience.

8. In England where Magistrates are not few but many—where almost every country gentleman is a Justice of the Peace, and it is ordinarily not the younger and least experienced that take the most active part in the administration of Criminal Justice, where but one language is spoken without the intervention of Omlahs, interpreters, or go-betweens, public opinion, and the press exert a beneficial control over the doings of every one to whom the exercise of power, greater or less, is entrusted. But in this country, however, progress may be yearly making towards the creation of such salutary influences; my own experience of the public observation of an unmixed native community, apathetic to a degree, unless their own individual and selfish interests are concerned, obliges me to consider it for any practical good to be expected therefrom as no observation at all, at least not such as could or would materially influence the opinions and proceedings of a Mofussil Magistrate in this country, otherwise uncontrolled. Distant too as most of our districts and sudder stations are from the presidency, supine as the natives are in seeking redress that costs them any trouble even in ordinary cases against their own countrymen, particularly if the oppression be not a very glaring kind, and has not proceeded to the length of being absolutely intolerable, difficult as it is in many cases for seniors of the same service at the same station to report upon the rumoured misconduct of their juniors unless the matter be officially brought before them, and swarming as our Courts do with perjured and false witnesses, I must confess that I do not consider the time yet to have arrived, the country to be prepared for, or that such of its people as are capable of forming an opinion of what would probably be for their country's good or evil, would desire any such very great change in the present system of administering justice, as confiding considerably greater final power to the least experienced of Officers, however well chosen, high charactered, and generally efficient, would yet, by abrogating all

Appeals, except on points of law, do away with what all natives wholly unconnected with our Courts, whom I have sounded on the subject, consider their palladium and safeguard, namely, the option of appeal to a higher tribunal from the possible and not unfrequent arbitrary proceedings, hasty decisions, imperfect investigations or prejudiced, and one-sided views of the Lower Court for the result to the unjustly convicted from whatsoever error is in any case the same.

9. I must, of course, admit that every approach that could be made to perfection in the selection of Officers would proportionately diminish the necessity for controul and check by appeal and supervision. But, while the removal on promotion, or by other cause of the Magistrate, who may have been some years in the District, to be succeeded by one new to it as well as younger in years, must necessarily cause variations and degrees of experience, general and local, (the latter being of no mean benefit in India,) I would respectfully remark on the improbability of finding so rare a combination of qualifications in any one office, as would entirely supersede the necessity of his judgments and decisions on points of fact and evidence being sometimes tested, and, if necessary, reversed or modified by an Appellate Court. The Magistrate, who is active and experienced, may be sometimes prejudiced or partial, he, who is zealous and intelligent, now and then capricious and self-willed, the talented and acute may occasionally be hasty and impatient, and he who would be honorable and upright may too much trust his Omlah, or be too much engrossed with unprofessional pursuits. To protect the people committed to his care from the possible consequences of any one Magistrate's erroneous judgments, arising from his peculiar bias, foible, or infirmity, I am free to confess with deference that I see no practical or tangible remedy, but that of Appeal; and, as far as my own experience goes, both as a Magistrate and a Judge, I cannot but fear that the proposed substitution of the mere supervision by the inspection and examination of cases and records after orders and decisions had been once made final, even with the power of animadverting for future guidance, without however errors or unjust orders being brought to the notice of the higher Court in the regular channel of Appeal by parties themselves aggrieved, would be found to be prac-

tically ineffectual and inoperative in securing the more than ever important object, which it would be to provide sufficient and effective supervision, supposing all appeals, except on points of law, to be no longer allowed.

10. On this particular point of supervision by inspection of Nuthees, and the power of even altering decisions passed in cases not appealed, I would respectfully remark that those powers as well as of hearing Appeals were to a certain extent possessed by the old Courts of Circuit, by their successors in Appellate jurisdiction, the Commissioners of Circuit, and latterly by the Session Judges until the passing of Act XXXI. of 1841; the last law regarding Criminal Appeals, the 4th Section of which made it unlawful "for any Criminal "Court in Appeals preferred to enhance any punishment awarded, or "to punish any person acquitted by the Court below," while the 5th Section allowing the full liberty to the superior of calling for and examining the records of inferior courts, rules it to be unlawful "for "any court under the degree of the Nizamut Adawlut to alter any "sentence or order of any Subordinate Courts, except upon Appeal by "parties concerned." I believe, however, it will be generally allowed that the mode of supervision without appeal was comparatively but little resorted to, and that had the latter not existed, the former alone would have been a very ineffectual check upon the Magisterial authorities.

11. Supposing all appeals on matters of fact and evidence to be abrogated, and the mode of superintendence by inspecting, and reporting on the proceedings of subordinates to be substituted and enforced, the question seems to arise as to how the Superior Court is to be guided in calling for the records of the lower Court for inspection and report. Appeals, except on points of law, being abolished, and the power of altering decisions no longer remaining, parties deeming themselves aggrieved, will not incur the expense of petitioning merely that the Superior Court may point out to the Subordinate what should have been, and is to be the order or procedure in similar future cases, while, if the higher Court be expected on perusal of Monthly Returns, or any other Statement, to examine all the Nuthees of cases decided by the lower Court, I should fear

there would be a much greater consumption of time than would be compatible with the performance of other duties, particularly in the case of Civil Judges, greater too than the time now devoted to the hearing of Appeals in the Sessions Court, since, although they may be many, and more in some months than others, still every case is not appealed. During the past year of 1844, from orders or decisions of the late Magistrate of this district, Mr. Drummond, in a total of 1,188 regular criminal trials, (482 being for heinous and 706 petty offences), held by that Officer, no more than 35 appeals were preferred to this Court in the twelve months. Had the now proposed system of supervision without appeal been in force during last year, would it have been my duty to have inspected the missils of the whole 1,188 cases decided, instead of only the 35 appealed?

12. On this part of the subject I would only further remark, that we have in England an appeal in certain cases to the Quarter Sessions against convictions of the Justices of Peace, as well as controul to a certain extent over the judgments of the lower Courts by writs of error and certiorari, and it is the object of an important Bill, now sought to be introduced into Parliament, and apparently, with every probability of ultimate success, by Mr. FitzRoy Kelly, "to provide an Appeal in criminal cases," both felonies and misdemeanours.

13. Having thus ventured to record my own views on the subject of Appeals, I would proceed to state within what limits I should consider it expedient and safe that the Magisterial authorities should be vested with final power in certain cases to a higher extent than they now possess. Prior to the passing of Act XXXI. of 1841, an appeal lay from any order of a Magistrate, but by the 2d Section of that enactment final power was given to every Magistrate, Joint Magistrate, and Assistant vested with special powers, to the extent of 15 days' imprisonment, or fines not exceeding 50 rupees, and 200 rupees under the conditions prescribed with reference to the maximum of legal fine in Section 8, Regulation IX. 1793; and the Court's Construction, No. 1361, of 9th September 1842, in all petty offences, such as abusive language, calumny, inconsiderable assaults "or affrays," and in all petty thefts not attended with aggravating cir-

cumstances or committed by persons of notorious bad characters, imprisonment for one month, (Section 9, Regulation IX. 1793) also without Appeal, and by Act III. of 1844, corporal punishment to the extent of 30 or 10 ratans, under the conditions provided for in Sections 1 and 2 of that enactment, respectively, in cases of theft of property not exceeding in value the sum of fifty rupees, also apparently without appeal.

14. At present appeals from every sentence of a Magistrate, Joint Magistrate, and Assistant Magistrate vested with special powers, and Principal Sudder Ameens, where exercising the powers of a Magistrate, awarding higher degrees of punishment than those above specified, lie to the Session Judge. Now it is evident that the Deputy Magistrates, when located in the interior of the Districts, must, to render them effective co-adjutors to the Superintending Magistrate at the Sudder Station, be vested with higher powers than those of a mere Assistant, and, I presume, they will accordingly, when first deputed into the Mofussil, be authorized to exercise the special powers described in Clause 3, Section 2, Regulation III. 1821, and ultimately be vested with the powers of a Joint Magistrate. The Chief Magistrate of the District, however, still retaining in his own hands the management of the Police.

15. Supposing then that such is the arrangement in contemplation, I would propose that the Magistrate at the Sudder Station be vested with final power to imprison to the extent of six months (or half the maximum prescribed in Regulation III. 1821, for the special powers of Assistants) in all cases of theft, larceny, and crimes of a felonious nature, which they are not now required by any other Regulation to commit for trial to the Sessions, that Joint Magistrates, Assistants or Principal Sudder Ameens, exercising those powers, be vested in the same description of cases with final power to the extent of three months' imprisonment, that Assistants vested with special powers, and Deputy Magistrates, when authorized to exercise those powers, be vested with final powers to the extent laid down in Clause 3, Section 3, of that law, viz. 15 days' imprisonment and 50 rupees fine, commutable, if not paid, to a further confinement for 15 days more, in cases of abusive language, calumny, inconsiderable assaults

or affrays; and that they also exercise, in convictions for petty thefts and crimes of that nature, the final power, which the Magistrate himself now possesses under Act XXXI. 1841, Regulation II. 1834, and Act III. 1844, viz. the maximum of one month's imprisonment, or corporal punishment under the conditions, and to the extent prescribed by law, any Deputy Magistrate, however, when authorized to exercise the powers of a Joint Magistrate, being vested with the same final powers as those Officers.

16. Beyond these limitations I should not myself consider it expedient to enchance the powers of the several Magisterial Officers without Appeal.

17. In the letter, which contains the suggestion of the Right Honorable the Governor for abrogating all appeals on matters of evidence and fact, it is proposed that applications for permission to appeal on points of law should be always accompanied by a copy of the order appealed against, so that the appeal might ordinarily admit of immediate decision by the Appellate Court without calling for the Record. By the Court's Circular letter, No. 13, of the 16th June 1843, the Magistrate's final Roobukarree or Proceeding is directed to be very brief and concise, it being in para: 2, of that Circular, declared "not necessary to preface the order with any lengthened details of the facts of the case (*all of which may be gathered from the Record,*") &c. &c. But even supposing the Appeal to be only on a point of law, it may, in many cases, be essential to a clear understanding of the matter, that the Appellate Court should have before it a detail of the facts of the case, with a view to determine how far the law applies to, or may be modified by particular circumstances. As the Magistrate's final proceeding would not supply this deficit, there would, I humbly submit, be no resource, but the examination of the original missil, or Record itself.

Again in the not uncommon cause of Appeal, the final proceeding being alleged to be at variance with the real facts of the case, as on record in the Nuthee (bur-khilafi-rœdad,) I would observe that as every Court's proceeding is worded, arguments adduced, and reasoning enforced, with a view to support and justify the final order it promulgates and records, a perusal of the missil itself could alone

enable the Appellate Court to form an opinion, and pronounce a decision on such a point appealed.

18. Whether or not the Sudder Court may deem it expedient to take the present opportunity of suggesting some modification of so much of Act XXXI. of 1843, as puts any one once acquitted by the Magistrate, of however heinous a crime, and whatever may be the evidence against him, beyond the reach of the cognizance of any Superior Court; I have myself had the honor of bringing to the notice of the Court at least one very important case, in which, while the actual perpetrators of a murder of one person and the severe wounding of another were convicted, the ringleader, a Gywal, who gave the order, and without which the murder would not have occurred, was acquitted; the evidence precisely the same, which convicted those found guilty, when the case was referred to the Nizamut Adawlut, being just as clear on the point of his ordering an instigation. Other cases too have come before me, and probably before other Session Judges, in which those obviously guilty of serious crimes have been suffered to escape in the face of amply sufficient evidence for their conviction and punishment.

19. The only remaining suggestion, which I would venture to offer for consideration in connection with the proposed reforms in the administration of Criminal Justice, and with a view of fully carrying out the object and wishes of His Excellency the Governor in bringing justice to the people's doors, is the expediency of the several Judges being required to hold periodical Sessions at the Stations of the Deputy Magistrates, as is now the case in some Zillahs, to dispose of the commitments of the Joint Magistrates of independent jurisdiction.

I have the honor to be,

Sir,

Your most obedient humble servant,

ROBERT FORBES,

Session Judge.

Session Judge's Court,
Zillah Behar, the 10th May, 1845.

No. 55.

To B. J. COLVIN, ESQ.,

Officiating Register of the Court of Nizamut Adawlut,

Fort William.

SIR,

Sessions Court.

As directed by the Court of Nizamut Adawlut, I have the honor to forward a report of my sentiments on certain suggestions for the improvement of the administration of Criminal Justice, submitted to the Court in a letter (No. 319 of the 19th February last) from the Secretary to the Government of Bengal.

2. To attain the end in view, it is proposed to abrogate all appeals on matters of evidence and fact; and permit them only on questions of Law. In the event of this proposition being carried out, it is believed that the present record of each trial may be dispensed with, and it is proposed to substitute for it a memorandum, in the hand writing of the presiding functionary, of the evidence taken, and of his reasons for decision.

3. It falls more within the province of the Nizamut Adawlut to decide on the expediency of abrogating appeals on matters of evidence and fact, from the orders of the Session Judges; but as the report called for evidently embraces this point, I venture to state, as my opinion, that appeals from these Courts, save on questions of Law, may be reasonably rejected. Trials before these Courts are conducted in open Court, and the evidence taken *vivâ voce*, while a Law Officer, a Jury, or Assessors are called on to sit with the Judge. At the close of the proceedings, a full report of the case is forwarded in English to the Superior Court, and the substance of the Futwa, or the verdict of the Jury, is likewise given, and if differing from the Judge's opinion, may be commented upon by the presiding officer. After so full and public an investigation as this system ensures, I see no utility in forcing another Court to wade through the whole record of evidence. If the sentence is reversed, it is generally on the ground of some inconsistencies in the evidence, which though

perfectly reconcileable by the Judge, who examined the witnesses, and who therefore gave no more than proper weight to them, create a doubt in the mind of the Appellate Court, which pleads in favor of the culprits.

4. Before proceeding to discuss the question of appeals from the orders of the Magistrate, I take the liberty of alluding to some remarks in Mr. Secretary Halliday's letter now before the Court, which as arguments for the abolition of appeals appear to me groundless. After alluding to the intention of His Excellency the Governor of Bengal to locate Deputy Magistrates in the interior of the District, the letter states as follows: "But the relief to the Magistrate will be merely nominal, and the comfort to the people very imperfectly promoted, if an appeal should lie from every case decided by the local functionary to the Magistrate at the distant sudder station; and it might happen that the time of the Magistrate would be taken up by appeals from their numerous subordinates, even more than by their present duties." Act XXXI. of 1841 has, however, provided against such a contingency. By that enactment all appeals from the orders of Officers exercising the powers of Magistrates, when beyond the limitation of Sections 8 and 9, Regulation IX. of 1793, and similar Regulations, must be preferred to the Session Judge, and, as I conjecture, all Deputy Magistrates "placed in charge of a circle of Thannahs," will exercise either special or full powers; no appeal can lie from their orders to the Magistrate, even when within the limitation referred to.* The reduction of appeals will therefore tend to the relief of the Session Judges. This question need not therefore be discussed, as hampering the efficiency of the Magistrate by taking up much of his time or attention; but as to whether an unlimited restriction on appeals except on questions of Law, will or will not interfere with the administration of substantial justice.

* Vide Construction of Nizamut Adawlut, No. 100 of 1842.

5. Although I am aware Appeals are often preferred from the orders of the subordinates without sufficient reason, yet I am not prepared to recommend so complete an alteration of the Law as the Government contemplates.

6. The authority of a Magistrate is more directly felt throughout his jurisdiction than any other Officers, and whether that authority is exercised for good or evil, depends so much upon the sense of justice and rectitude of the individual, that its effects can never be calculated beforehand.

7. The prominent object of this functionary's ambition is to keep his district in good order, and prevent the commission of crime within its limits. The obvious means of promoting this end, that present themselves to most minds, are the certain punishment of offenders. This is believed to act as a preventive check, deterring others by its example, and securing the restraint of those who might infringe the Law.

8. It is also a part of the present system, that the Magistrate, while administering Criminal Justice, must superintend the proceedings of the Police. In all matters of doubt or difficulty the Police apply to him for orders. His instructions are issued on the faith of reports sent in by these officers, and these documents are all that he has to guide him till the case is tried. Before a case can regularly come before him in this way, a Magistrate has made up his mind that the offence has been really committed. He next becomes, I may say, personally interested in the punishment of the offenders. If he is also induced to believe that these offenders are before him, he will not be over scrupulous as to the means that have been used to detect, and criminate them; and in the end they are sure to be convicted.

9. While therefore the system of criminal procedure requires the Magistrate to perform the anomalous duties of Judge and Police Officer, there must be *many* cases, in which it would be unjust to withhold the right of appeal, and to which the checks proposed are quite inadequate, except to render the duty of control a most irksome one to the superintending authority.

10. My experience leads me to think that the right of appeal should be restricted in no particular class of offences, but that the circumstances, which govern the case itself, should guide the Appellate Court in entertaining the application. There are however many trials held by a Magistrate, in which his prejudices are not likely to

be enlisted, and in those a rejection of the appeal may be made imperative. Thus in all cases of common assault, affray, cutting of crops, forcible seizure of property and person, in which a *bonâ fide* prosecutor and defendant are confronted, and their witnesses summoned by subpœna through the peons or chuprassees of the Court. In cases of common theft and burglary (under the restrictions now in force) when the offenders have been *taken in the fact*, or recognized, and afterwards apprehended with the stolen property, or part *in their possession*, within 48 hours after committing the crime. That this should extend to cattle-stealing under the like *proviso* regarding the apprehension of the culprits. And to all cases in which the accused pleaded guilty on trial, whether taken in the fact or afterwards apprehended.

11. In enumerating these cases, I have assumed the certainty of the Foujdaree Officer being an unbiassed Judge, and have endeavoured to draw a marked distinction between them, and those in which his interference previous to trial must have been exercised, either for the prevention or detection of crime. Among these last I might instance the constant practice prevailing in all Foujdaree Courts of sentencing parties to imprisonment, if unable to furnish security for future good behaviour. The accusation of bad character is either got up by the Police, as an excuse for crime known to have been committed, and remaining undetected in their Thannahs, or it is divined by the Magistrate or other Officer, when trying cases, which afford presumption, but not proof of guilt, and when the release of the prisoners under the head of "Acquittals," is, if possible, to be avoided. In these matters, I think, a Magistrate is likely to be not only hasty, but unjust. Again where robberies, or other crimes have been committed, and the criminals have escaped recognition or apprehension, the Police, with the knowledge of the Magistrate, are obliged to employ spies, or other questionable means of tracing out, and bringing the culprits to justice. In fact, the necessity he feels of allowing no crime to pass unpunished, leads him to have recourse to means only justified by their object, and I firmly believe that many a right-minded Officer, under these circumstances,

will take so partial a view of the case, that he is incapable of drawing just inferences from the evidence before him.

12. I have not yet heard what duties are to be entrusted to the Deputy Magistrates located in the interior. I conjecture they will have to perform the same functions within their jurisdiction, that now appertain to the Magistrate's office. What I have ventured to urge as objectionable in the proposed alteration of the law will, if reasonable, bear still more against these functionaries. The whole proposition regarding them is as yet an experimental one, and to invest them at once with the onus of carrying out the principles of the new system is not likely to divest it of any of its pernicious qualities.

13. As to the proposition suggested in Mr. Secretary Halliday's letter of substituting a memorandum in the handwriting of the presiding Officer, in lieu of detailing the evidence at length, I have only to remark, that I cannot see how this practice will afford any data to guide the opinion of the controlling Officer in revising the proceedings of his subordinates. It must be taken for granted "*primâ facie*," that entries of this nature in the memorandum book are correct; it is not likely that the judgment following, will be at variance with them. If appealed to, it will consequently justify the presiding Officer, and any further enquiry must be most irksome to the superior. As a check on the dishonest and corrupt, it must be rather worse than useless, as it may be so easily made the means of screening such a person from detection and censure.

14. I also feel justified in asserting that none but a native, well practised in the vernacular dialects of the country, could pretend to take down evidence in this manner. If the present system of record is found too cumbrous, the whole proceedings in petty cases, or such as are not appealable, might be included in a roobucaree, and signed by the presiding functionary. But I deem it essential both for the satisfaction of the parties before the Court, and of the deciding Officer, that this document be drawn up in open Court, and in the native language. If such is not the case, the most vexatious complaints will be brought against the deciding Officers, the integrity of their

memoranda will be called in question; and the worst of it is that, should the witnesses be required to verify the report of their evidence, they are as likely as not to deny it.

I have the honor to be,
Sir,
Your most obedient servant,
H. T. RAIKES,
Session Judge.

Zillah Midnapore,
The 30th April, 1845.

No. 173.

To B. J. COLVIN, ESQ.,
Officiating Register of the Court of Sudder Nizamut Adawlut,
Fort William.

SIR,

Sessions Court.

I have the honor to acknowledge the receipt on the 27th ultimo of your Circular, dated the 28th of February, with a copy of a letter from Government, No. 319, dated the 19th of February last, and an extract from a dispatch,* from the Hon'ble Court of Directors, relative to the simplification of Magisterial Proceedings, and of the present system of Record and Appeal from the decision of the Criminal Authorities.

* No 20, dated 21st August 1844.

2. With regard to the simplification of the Proceedings of the Magisterial Authorities, I submit that a strict adherence* to the rules laid down in the Court's Circular, No. 138, of the 16th of June 1843, will effect as summary a mode of procedure as is desirable, or perhaps possible in cases, which under the existing law are liable to appeal. It appears to me, if a book were kept, as supposed in the 6th para: of Mr. Secretary Halliday's letter, in the language and handwriting of the presiding functionary, containing a memorandum of the cases tried, of the evidence, and of his reasons for decision, this information could not be

* Due care being taken, at the same time, to prevent the summoning and examination of too many witnesses.

more briefly and succinctly afforded than it is in the form circulated for the present guidance of the authorities, nor can I think it desirable that evidence should be taken, or noted in any other language than what the witness, and, if possible, the accused understands, which would be the consequence of the abolition of the present system of procedure in cases, in the Provinces subject to the Bengal Government, where the presiding functionary may be an Englishman, a foreigner, or a native of the Upper Provinces. The time of the functionary presiding at the trial, would, I think, be too much occupied in drawing out the supposed memorandum of the case. Experience tells me that the time of Civil Judges is now greatly encroached on by following the rules laid down in Act XII. of 1843, and though the Magisterial memo. need not be so particular, I believe that the presiding functionary would have to give more time, of which he has little to spare, to the drawing up of it, than is required by the present system.

3. On the subject of the proposed change in the Appeal Law, though it may admit of modification, I beg, with great respect, to express my dissent from the opinion* held by His Excellency the Governor, conveyed in Mr. Secretary Halliday's letter, which accompanied your's. I submit that the powers of a Magistrate in India are, beyond comparison, greater than those possessed by any similar functionary under any civilised Government that I am aware of, and are far too extensive to render it advisable to allow the uncontrolled exercise of them; which would, I think, be the result were no appeal permitted from his decisions. In these Provinces he is often a very young man, generally from his situation uncontrolled by public opinion, with little public experience, and he is liable to be, from the nature of his duties, in some manner inclined (though not aware of the inclination) towards conviction for the sake of example; as he combines ministerial and executive functions, he may be apt to think that crime, by the example of punishment, will be suppressed and prevented in his district. The double functions he possesses cause him to be held

* "As a general rule, His Excellency would be disposed to abrogate all Appeals on matters of evidence and fact."

responsible for the increase or decrease of offences in his jurisdiction. For the small or great amount of crime in it he is awarded praise or blame, a system, I fear, that is not unlikely to induce a proneness to severity of punishment, and rendering, I submit, at least while this system obtains, correction by appeal most desirable. It does not indeed appear to me that this correction and control could be exercised, were appeal on points of law only permitted. Every Judge's experience will tell him that such points are most rarely mooted in appeal; in fact the generality of prisoners and appellants are so ignorant regarding law, and every other subject, that they are unable to state in their petitions of appeal, under what law they are punished. The petitions of appeal given by prisoners to me every month on my periodical visits to the Jails, so imperfectly describe their cases that I mostly have to call for and peruse a great portion of the proceedings before I can understand the case. It is in every case almost on points of fact and evidence that appeals are preferred; and when perjury is the cheapest, and most ready at hand, of all Indian commodities, I submit that the privilege of appeal on every point ought not to be taken away.

4. Regulations XXII. of 1793, for the arrest and imprisonment of vagrants, VIII. of 1818, and the various laws authorising imprisonment in default of security for good conduct, IX. of 1793, and the other Regulations, on the subject empowering a Magistrate to imprison for false complaints, are especially arbitrary enactments, not invariably enforced with due caution and consideration. It would, in my humble opinion, be particularly to be regretted, were appeals abolished from decisions passed under those laws. Indeed when I consider that Government contemplate the employment of an extra number of Deputy Magistrates, I cannot but feel that great hardship will ensue if the decisions of those Officers, comparatively inexperienced persons, are to be uncorrected on appeal on all points. If an uncontrolable increase of work in appeal is discovered to be the consequence (as is supposed in Mr. Secretary Halliday's letter) of this addition to the Magisterial force, I submit, then it will be sufficient time to legislate on the subject, but I do not think that the occasion of

employing Officers, many with little experience and many whose over zeal will often lead them into serious error, ought to be taken to abolish an useful system of check and control which, I respectfully urge, the power of calling for, inspecting and reporting on the proposed too imperfect memorandum of the evidence, and of the reasons of decision, will afford a very inadequate substitute.

5. It is stated in Mr. Secretary Halliday's letter that His Excellency the Governor is of opinion that the consequence of the present system of appeals is great harassment to parties, and delay before a case gets through the Courts of original and appellate jurisdiction. But this can only follow where the latter makes a postponement of the former's order the invariable or general consequence of presenting a petition of appeal; which is a plan, I think, to be as seldom as possible adopted, and which the Sudder Nizamut Adawlut would, of course, object to, if its too frequent occurrence rendered it necessary for them to interpose. A figured monthly statement would make the adoption, or otherwise, of the system I refer to, at once apparent to the Court.

6. The manner in which the time of the Sessions Courts are occupied by the disagreeable duty of hearing appeals, is an undeniable fact, for which, at present, I can see no safe remedy. But, I think, the Sudder Nizamut Adawlut might be relieved from that duty; and that it may be enacted, with perfect safety, that appeals should not be preferred from the decisions of Sessions Judges. I may, I hope, express this opinion without inconsistency, when it is considered how much older in experience Sessions Judges are than the generality of Magistrates, that they are, unlike them, divested of the mixed executive and magisterial character, and that they never originate a case,* which is, with the exception of those of Thugs and Dacoits, always tried with the aid of a Jury, or a Moolvee. But in order that the Sudder Nizamut Adawlut should exercise complete control over Sessions Judge's Proceedings, I would make no alteration in the present mode of taking evidence, which should be always fully noted, and ready for the Court's inspec-

* Nor is a case ever originated before the Sessions Judge.

tion, whenever they saw fit to call for the Sessions Judge's Proceedings.

7. Having alluded to the frequent but unavoidable employment of young men in the duties of Magistrate, in the 3d para. of this letter, I beg to mention that on referring to the published lists for 1844, of Civil Servants, employed in these provinces, I find that of 20 Officers, either acting Magistrates, independent Joint Magistrates, or Joint Magistrates subordinate to Magistrates, now or until very lately forming a considerable portion of the Magisterial authorities, the following were the periods, reckoning from the date of being declared qualified for the public service, at which they were invested with the immense powers the law places in such hands:—

1	3½ Months	10			
3	7 Ditto	2	11	Months.	
1	7½ Ditto	1	11½	ditto.	
1	8 Ditto	1	1	Year.	
1	8½ Ditto	2	1 ditto	2	ditto.
1	9 Ditto	1	1 ditto	4	ditto.
1	9½ Ditto	2	1 ditto	6	ditto.
1	10 Ditto	1	1 ditto	11	ditto.
10		20			

and when it is considered the very young age at which these powers were placed in those gentlemen's hands, and that the employment of equally young men in the same manner is unavoidable, it is not, I submit, expedient to take away all authority to correct their official acts, from their superiors, which will, I consider, be the consequence if the system sketched in Mr. Secretary Halliday's letter becomes law.

I have the honor to be,

Sir,

Your most obedient servant,

ROBERT TORRENS,

Session Judge.

24-*Pergunnahs, the* 30*th April,* 1845.

No. 69.

To the Offg. Register to the Nizamut Adawlut,

Fort William.

Sir,

I have the honor to acknowledge the receipt (on the 25th instant) of the Court's Circular, No. 9, of the 28th ultimo, with its enclosure, requiring a report of my sentiments on the suggestions for simplifying the proceedings of the Magistracy and the Police, contained in Mr. Secretary Halliday's letter to the Court of the 19th ultimo.

2. The system of record in criminal proceedings, although much less diffuse than the one which obtained previous to the issue of the instructions contained in the Court's Circular, No. 13, of the 16th June 1843, is, no doubt, susceptible of still further abbreviation, and it seems to be universally admitted that the more simple these proceedings are made, the greater will be the efficiency of the administration.

3. The facilities which a voluminous system of record affords to the Police Officers for distorting the facts of a case are well known, and although there are doubtless some exceptions, the general impression seems to be that the "Sooruthauls," recorded by these Officers in conformity with Section 15, Regulation XX. of 1817, cannot be relied upon as faithful statements of facts, while the preparation of them causes much unnecessary delay, and interferes materially with the performance of the proper duties of the Police. For these reasons, I am of opinion, that these documents might, with advantage, be altogether dispensed with, as suggested by the Police Committee in the 74th paragraph of their report of the 18th August 1838, and the duties of the Police confined to a summary *verbal* enquiry without recording evidence. The result of this enquiry might be briefly stated in the last column of the "Chellan," No. 2, required to be sent in with the prisoner by Clause 16, Section 19, of the Regulation above quoted, which should contain the names of the witnesses in the penultimate column. If the charge should be unsubstantiated, a brief report might be forwarded to the Magistrate,

merely mentioning the substance of the charge, the names of the parties questioned in support of it, and the Darogah's reason for releasing the accused, whether on bail, or unconditionally. In ordinary cases, an enquiry should not occupy more than one day, and no prisoners should be detained at the Thannah, *upon any pretext whatever*, beyond 12 hours. The prosecutor and witnesses ought invariably to be bound over to appear before the Magistrate on a specific date, instead of being sent in under the custody of Burkundazes, as is now generally done.

4. Under the system above described, the written examination of all prisoners sent in by the Police might be deferred until their arrival at the Magistrate's Court, and thus an effectual check would be placed on the practice of extorting confessions, which has so long existed, to the discredit of our Police system. Mofussil confessions, unless repeated before the Magistrate, are seldom relied upon, and, when a prisoner really wished to acknowledge his guilt, he is more likely to tell the truth before a Magistrate, than before a Police Officer; at all events, there would be little or no chance of any undue persuasion, or intimidation being made use of in the latter case.

5. The Darogah should be strictly enjoined, upon pain of punishment by fine or otherwise, not to bind over any witnesses except those whose evidence may be *absolutely necessary* to elucidate the main facts of the case, and to the names of each class of witnesses, there should be added (in the proper column of the chellaun) a short note indicating the facts to which they can severally depose—for example:

A. B. and C. Eye-witnesses to the robbery.

D. and E. To finding of the property.

F. and G. To recognition of it; and so on; at present, the proceedings of cases sent in by the Police are needlessly encumbered with a mass of useless evidence, owing to the number of witnesses, who are brought forward, many of whom are quite immaterial to the issue of the case. As a general rule, I should say that two, or at most three, witnesses are sufficient to prove any given fact, and except in very special cases, that number ought never to be

exceeded; there would be no necessity for taking a separate recognizance (mochulka) from *each* party, one would suffice for the whole of the witnesses in each case.

6. Every return to a perwanah ought, as a general rule, to be written upon the back of it, in as few words as possible; at present, it is not unfrequently the custom for Darogahs to enter into a long history of all the measures they have taken, whether for apprehending an offender, or securing the attendance of a witness, concluding with a statement of their inability to find the person sought for, and forwarding a collection of "Soorathauls," signed by the inhabitants of the villages in which search was made. The submission of such reports (which are in general mere excuses for evading the execution of the process) ought *ipso facto* to entail a heavy penalty upon the Police Officer, who may forward them. In such cases, the apprehension of the party summoned, or a brief statement that he cannot be found, would constitute a sufficient return to the perwanah.

7. As the system of simplification, which it is proposed to introduce, cannot be carried out as long as the provisions of Regulation XX. of 1817 are in force; a modification of that enactment will, probably, be found necessary, and in that case I would suggest that a few plain and simple rules, of which the meaning cannot be perverted, be promulgated for the guidance of every Police functionary, and that a knowledge of the duties to be assigned to him, be made an indispensable test of qualification on the appointment of every Policeman.

8. The proceedings in the Magistrate's Court have already been so much abridged by the Court's instructions of the 16th June 1843, that they can scarcely admit of further simplification, unless it be deemed advisable to dispense altogether with the system of recording evidence as suggested in the 6th paragraph of Mr. Secretary Halliday's letter, which I should feel considerable hesitation in recommending, except in very trivial cases. I am of opinion, however, that the depositions might be recorded in a more *condensed* form than the one at present in use, and that instead of taking the examination

of each individual on a separate sheet or sheets, the record should be drawn up in the form of a "Roidad," such as is prescribed for Sessions trials by the Court's Circular of the 16th July 1830, merely the *substance* of each deposition, and the answers to the questions put, being taken down, omitting all repetitions and irrelevant matter; the whole to be closed by the Magistrate's final order, whether for punishment, committal to the Sessions, or release, which should be contained in as few words as possible.

9. On the subject of appeals I have the misfortune to entertain sentiments different from those contained in Mr. Halliday's letter, and therefore I submit them with the utmost deference. I am inclined to think that the inconveniences arising from the system of appeals are not so great as the Government seem to think; and that the good effects of it are more than sufficient to counterbalance such inconveniences as do exist, and are inseparable from every system, which admits of appeals from inferior Courts. It is stated in the 7th paragraph of Mr. Halliday's letter, that "it might "happen that the time of the Magistrates would be taken up "by appeals from their numerous subordinates, even more than "by their present duties;" but, of this, I entertain doubts. At present the Magistrate has the superintendence of all the Police in his district, in addition to his judicial functions, including the trial of appeals from his subordinates to attend to. Under the new system, he will be relieved of the immediate controul of, at least, the greater number of the Police Thannahs, as well as of the trial in the first instance, of such of the cases connected with them, as would have come before him under the old. He will, consequently, have little more to do than to superintend and controul the proceedings of his subordinates, and to look after the Jail. To render his superintendance *effectual*, he ought, in my opinion, to have the power not only of calling for and examining the Records of the Courts subordinate to him; but of altering their sentences upon appeal by parties concerned. Without such power, it appears to me, that the Magistrate's controul would be little more than nominal, while he would be deprived of the best possible test for judging whether

his subordinates give satisfaction to the people, or not, by their decisions.

10. But the chief objection, which presents itself to my mind against the proposed abrogation of the right of appeal, is the evil effects that may not unreasonably be looked for, from a number of *untried*, and perhaps imperfectly qualified functionaries being invested with extensive criminal powers, uncontrolled by the salutary check of appeal. I do not apprehend that any of the newly appointed Deputies would *wilfully* abuse the confidence reposed in them; but I fear that many errors of judgment must be expected from inexperienced officers, not accustomed to estimate the value of native evidence, and whose very *zeal* might lead them to take prejudiced views of cases without being themselves aware of it; I would, therefore, earnestly hope, that Government will give due consideration to these objections before passing any enactment, that would deprive even the meanest of its subjects of the right of appeal against an unjust sentence.

11. The only alterations that I would be inclined to suggest in the present Law of Appeal are, an extension of the powers of the Magistrates, enabling them to decide appeals from all sentences of their subordinates within the limitation prescribed by Clause 3, Section 2, Regulation III. of 1821, and an abolition of the right of appeal from summary awards passed under the provisions of Act No. IV. of 1840, except on the grounds of the irrelevancy of the Regulations.

12. Such an arrangement would admit of the cases of minor importance being, generally, decided in the first instance by the Assistant and Deputy Magistrate (who, I presume, will not, for some time to come, be entrusted with higher powers than those described in the preceding paragraph), and of all appeals from their decisions being promptly disposed of by their immediate superior, the Magistrate. It would also, by reducing the number of appeals to the Session Judge, enable that functionary to decide all that would come before him with greater expedition, and to exercise a more efficient supervision of the proceedings of the Magistrate and

his subordinates, than he can at present, encumbered as he is with such a multiplicity of business. The relief afforded by the abrogation of the right of appeal in cases under Act No. IV. of 1840, to the extent suggested, would be very great, and as all decisions under that enactment are subject to an appeal to the Civil Court, no hardship to the parties would be caused thereby.

13. The Nizamut Adawlut, under the system proposed, would continue to receive appeals from the Sessions Judge, and to exercise a general control over the proceedings of the whole of the Criminal functionaries subordinate to it, and I think that, if means could be devised for reducing the number of Criminal trials, referrible to that Court, it would be a very great improvement upon the present system. In cases tried with the assistance of a Jury or Assessors, the Session Judge has the power of passing sentence contrary to the verdict, and I can see no sufficient reason why he should not possess the same power in cases tried with the assistance of his Law Officer, recording his reasons for dissenting from the "Futwa," in his Monthly Abstract Statements of persons punished without reference, to enable the Court to judge of their sufficiency. Neither can I perceive any advantage arising from the reference to the Superior Court of all cases of rape, and recommendation for mitigation of punishment for perjury, &c., which the law, as it now stands, requires to be made.

14. The Records of the Session Court are now drawn up in a very concise manner, and I cannot suggest any further abbreviation of them, but I think that *copies* of the record of cases referred to the Sudder Court might very well be dispensed with, and the *originals* forwarded instead.

15. I would fain hope that a modification of the law of appeal to the extent, which I have ventured to suggest, coupled with the proposed simplification of the proceedings of the Police, and a less voluminous system of record in the Courts of the Magistrate and his subordinates, would suffice to ensure a sufficiently prompt administration of justice, without recourse being had to the abolition of "all appeals on matters of evidence and fact," suggested in the 4th

paragraph of Mr. Halliday's letter. A measure, which I should be very sorry to see carried into effect, and which, I fear, the natives would regard with great distrust and dissatisfaction.

16. It is very true that the Court of the First Instance, from having the parties before it, *ought* to be better able to judge in matters of evidence and fact than any Court of Appeal; but experience has shewn that such is not, invariably the case; and until the same amount of intelligence, judgment, temper, and power of discrimination of evidence (which latter can only be acquired by long experience) can be ensured in the Lower Courts, and is generally to be found in the higher, I think it would be unsafe to adopt it as a "general rule," and legislate accordingly, especially in matters affecting the personal liberty of the subject.

I have the honor to be,
Sir,
Your most obedient servant,
F. GOULDSBURY,
Session Judge.

Bhaugulpoor, 27th March 1845.

No. 54.

To B. J. COLVIN, ESQ.,
Officiating Register Sudder Nizamut Adawlut,
Fort William.

SIR,

With reference to your Circular letter, No. 9, of 28th February last, transmitting copy of a letter, (No. 319, of the 19th February 1845,) from the Secretary to Government of Bengal, containing suggestions for simplifying the proceedings of the Magistrates and the Police, I have the honor to forward the following remarks and opinions thereon.

2. The system of appeals is certainly opposed to the general wants and habitudes of the people, we may have spoiled them in that respect, but appeals were neither heard of nor desired before the introduction of our laws. What they want is a quick and unbiassed

decision, and right or wrong they are generally satisfied, if it has the latter quality.

3. I agree in the opinion that the cumbrous system of Record and Appeal in all trifling cases, ought to be done away with, indeed the actual working of the present system is nearly the same as if it were, for the percentage of cases reversed in appeal in proportion to those decided is so small, I believe, below 1 per cent., that all the voluminous proceedings in 99 cases out of a hundred go for nothing; still there ought to be some means of correcting abuses when particularly required, and for checking and punishing perjury, which would be very difficult, if the evidence was not taken down in writing at the time of delivery, it is therefore only in very trifling cases (which, however, form the bulk of the business) that I would do away with the written evidence. I do not think the plan of the Officer presiding, making a short abstract of each case in his own language would answer, as to be of any use, it must be very well done and clearly written, and that would take up too much time. In very trifling cases, an English Record of the charge and judgment might be sufficient, and in other cases a Vernacular Roobakaree as at present.

4. "All appeals on matters of evidence and fact to be abrogated, and only those on questions of law to be allowed." As it sometimes happens that there is no evidence whatever to prove the charges of which parties have been convicted, and it is often alleged as a ground of appeal, written evidence would be necessary to ascertain if such was the case. Appeals also might be allowed in mitigation of punishment, when such appeared too severe for the crime charged, or the circumstances of the case.

5. For a commencement the appeals now allowed in cases under Regulation IV. of 1840, ought immediately to be disallowed, and recourse had to the principle of the older Regulation XV. of 1824, which is nearly the same as that now proposed, and by which appeals on matters of law only were allowed.

6. One fertile source of injustice is still the great repugnance of respectable people to take an oath in a Court of Justice, and the

difficulty in consequence of obtaining good evidence, and, although the form has been lately modified, that repugnance has been rather increased than diminished. Perhaps, this might be partly got rid of, by not requiring any particular form of oath, but merely enacting, that all statements on evidence given before a Magistrate, when proved to be false, be considered as perjuries, and those who make them liable to the same penalties. Our daily experience in the Mofussil Courts goes to prove, that the present form of oath has no moral or religious influence whatever, except that it tends to drive the more respectable witnesses out of Court from religious scruples.

I have the honor to be,

Sir,

Your most obedient servant,

J. F. CATHCART,

Session Judge.

Session Judge's Office, Zillah Tirhoot,
The 15th May, 1845.

No. 46.

TO THE REGISTER OF THE COURT OF
SUDDER NIZAMUT ADAWLUT,
Fort William.

SIR,

Session Court.

I have the honor to acknowledge the receipt of the Court of Nizamut Adawlut's letter,* No. 9, under date the 28th of February last, forwarding copy of a letter from the Secretary to the Government of Bengal, dated the 19th of the same month, No. 319, and in reply to submit the following sentiments on the subjects therein discussed.

* Circular received on 26th March 1845.

2. With regard to the point first mooted, the cumbrous system of record, I am of opinion, that a very material modification of the present system may be effected, without the fear of its at all impairing the efficiency of the record itself, or entailing any very serious inconvenience; and adding at the same time a very considerable

saving of time both to the Police and the Magistrate, as well as contributing much to the comfort and facility of prosecutors, witnesses and defendants. I agree in the feasibility of the suggestion thrown out, that in all cases of petty assault, larcenies and trifling misdemeanours, a simple English record taken down in the Magistrate's own hand-writing would amply suffice; and consider that it would supply all the materials requisite for the purpose of check and supervision, and afford a more faithful record than we now often obtain from our voluminous Bengallee depositions, whilst the people would receive in reality the ends of a more substantial justice.

3. In respect to the Mofussil proceedings, or Sooruthals of the Police, they are still voluminous, and in many instances the rules circulated with the Court's letter of the 16th June, 1843, No. 13, have not been fully acted up to, and will admit of much curtailment; and now, that we are about to have Deputy Magistrates appointed to each district with separate jurisdictions, and justice will be brought so much nearer to the homes of the people, I would prohibit the Darogah from holding any proceedings, or, in fact, from any interference in any case whatsoever; heinous offences alone excepted, without being specially directed so to do by the ruling authority of the division. With three or four Joint Magistrates, or Assistants in a district, any person desirous of preferring a complaint, would, generally speaking, be able to reach the residence of the Superintending Functionary as soon as he would that of the Police Darogah, who would at once be able to ascertain with considerable more accuracy whether the complaint was one calling for local enquiry or not. These petitions, as usually presented to the Police, originating in cases of *loot-turraj*, trespass, and petty assault; but abounding in exaggeration and drawn up with such plausibility as to puzzle the Darogah himself, whether they are cognizable by him or not, still continue to form the heaviest portion of the Darogah's duty, or at least of the subordinate Police, and the result generally produces a nuthee as large as that of a murder or a dacoitee. This I purpose to suppress, and would prohibit even the receipt of such petitions altogether on the part of the Police, and with

a few Burkundazes, say one or two from each Thannah, in constant attendance with the superintending authority, he would be enabled to execute most of his own orders, with more expedition than could generally be done through the circuitous intervention of the Thannah. Even in larcenies, if appeal be done away with, which I purpose recommending, I would dispense with all Mofussil detail, I would direct simply the transmission of a short urzee, which need never exceed one sheet of the common sized country paper, stating the prominent facts as they had transpired, and accompanied only by a list of the prosecutor and the witnesses, and the usual chellaun of the prisoners, &c., with a short memorandum opposite to the name of each of the facts to which they could depose. In the more heinous offences too, a needless quantity of redundant matter still continues to form the bulk of the Mofussil nuthee, which may be dispensed with without at all affecting the trustworthiness or import of the record; but if the rules of the 16th June 1843 were strictly followed out, this would in a considerable measure be remedied.

4. On the subject of appeals, I most decidedly coincide in the suggestion that they may be dispensed with in all cases of petty assault, larcenies, and trifling misdemeanours. I would, in fact, do away with appeals in all cases, in which the punishment awarded was not in excess of Section 19, of Regulation IX. of 1807. I annex in the margin an abstract for the past year of all heinous and petty offences disposed of by the Magistrate, and the number and result of appeals preferred; as also a similar statement as respects the Subordinate Judical Officers. With regard to larcenies, the appeals are exceedingly few, and in those which have come before me. I have

Cases decided by the Magistrate in 1844.

Officer.	Heinous Offences.	Petty Offences.	Total.
Magistrate,... ...	330	716	1046

Appeals preferred to the Session Judge in 1844.

Preferred.	Pending.	Total.	Confirmed.	Reversed or Modified.	Rejected.	Total.
179	3	182	115	61	6	182

Cases decided by the Subordinate Judicial Officers in 1844.

Officers.	Heinous Offences.	Petty Offences.	Total.
P. S. Ameen, ... Sudder Ameen, ... Dy. Magte. &c,...	16	570	586

Appeals preferred to the Magistrate in 1844.

Preferred.	Pending.	Total.	Confirmed.	Reversed or Modified.	Rejected.	Total.
67	1	68	51	12	5	68

seldom found reason to interfere with the decision come to, and there would be little or no chance of any injustice being committed by the abrogation of the appeal. In assaults and misdemeanours where there is so much false evidence mixed up with the truth, and where different cases assume such different aspects before distinct authorities, of course, instances will occur where the Appellate Court will differ; but after all, we are more frequently compelled to decide upon the probabilities of such cases, than from giving implicit credit to either party, and the Magistrate, as remarked in the Secretary's letter, having the parties before him, is perhaps in most cases as likely to be right as the Appellate authority. I think, therefore, that in all matters of evidence and fact, such appeals may be safely abrogated, leaving an appeal on questions of law only; and in all cases exceeding the powers of the Section and Regulation above quoted, I would leave an appeal open as hitherto. When left the entire judge of a case, and knowing that the ultimate responsibility rests with that Court, I have no doubt that greater caution will be exercised in coming to decisions; for there can be no question that cases do occur where doubts are entertained by the Court of First Instance, that it will send up a case to the higher authority, where, had the entire responsibility rested with that Court, it would have acquitted; and in like manner the Court will occasionally venture upon a point in a case where he would otherwise hesitate; did he not know that an appeal was open if any injustice had been committed.

5. Should the purport of these rules, however, be carried into effect, I think that some return should be furnished by the Magis-

terial authorities to the Session Judge monthly, to enable him to examine the nature of the crimes and decisions come to, and send for and test such recorded cases as may seem to call for notice; or the Magistrate might be directed to keep his English record separately for each month, and at the commencement of each following month, or at such periods, as he may deem advisable, the Session Judge might send for the record and run his eye through the whole. Statement No. 9, of the old forms used to afford a very good criterion for judging of the probable goodness or badness of the sentences passed with reference to the crimes charged; but since its abrogation Session Judges are rather at a loss for any regular system of check in the selection of cases excepting such as come before them in appeal. Now if the appeal be abrogated also, it becomes the more necessary that some other opportunity of check should be afforded.

6. But as respects this individual district, and, I fancy, it must be the same in many others, if one object be to avoid a useless accumulation of Record, and at the same time to a
authorities greater leisure for more important
of the Court should be directed to the sub
under Act IV. of 1840, without which, I fee
desired will not be attained. I annex in th
the number of cases instituted and disposed of by the Magistrate under this Act for the past year, and the number of appeals preferred and decided. During the months of January, February and March, of the present year, I find no less than 223 cases have been instituted, showing a heavy increase compared with the number instituted during the same period of the past year.

Cases instituted under Act IV. of 1840 *in* 1844.

Officers.	Preferred.	Disposed of.	Pending.
Magistrates, ...	520	410	110

Appeals preferred under the same Act to the Session Judge in 1844.

Preferred.	Pending.	Total.	Confirmed.	Reversed or Modified.	Rejected.	Pending.	Total.
196	6	202	147	51	0	4	202

The proceedings, though intended to be summary only in their nature, are many of them cumbrous in the extreme, and I am quite confident that the Magistrate would arrive at a much more satisfactory conclusion were the same system followed in these cases as is proposed for petty assaults, &c., viz. by a personal examination taken down at the moment in a book in his own hand-writing, and disposed of summarily on its merits. At present there are no other cases that are kept so long pending on the file. I would do away with all appeal in such cases likewise, except on questions of law, and having the option always of immediately going into the Civil Court, I do not think there would remain any just reason of complaint. At present my time is little less occupied during the month in the disposal of these appeals than it is in transacting civil business, and consequently much to the detriment of the latter.

I have the honor to be,
Sir,
Your most obedient servant,
T. TAYLOR,
Session Judge.

Mymensingh. the 14th April, 1845.

No. 73.

To B. J. COLVIN, ESQ.,
Officiating Register to the Nizamut Adawlut,
Fort William.

SIR,

I have the honor to forward the report called for by the Court, under date the 28th February last, regarding the simplification of the proceedings of the Magistrates and Police.

2. Having been for some years past, exclusively employed in revenue duties, it is with great diffidence that I submit my sentiments on this important subject, and a desire to contribute even in the least degree, to bring about so desirable a result as the improvement of our criminal procedure, will, I trust, form my excuse.

3. The two main topics discussed in Mr. Secretary Halliday's communication, are those of Record and Appeal; the abbreviation of the one, and the restriction and contraction of the other. With regard to the first, I am under the impression that no great delay occurs in the decision of the Courts subordinate to the Magistrate *quoad* diffuseness, the evil would then begin to be felt by that Officer, in having to review such proceedings in appeal, and to the conduct of original cases before him. The first would be disposed of under the second head of Appeal, and would leave us to deal with the Magistrate's proceedings as a Court of First Instance.

4. The size of a record would *primâ facie*, urge the feasibility of great abbreviation and consequent relief to the Magistrate, but how stands the case? However paradoxical it may appear, it will, if examined, be found correct,—that the size of the Record is a good exponent of the aid afforded by the system to the Magistrate. It is not the appeal from his decisions that obliges him to substitute written for *vivâ voce* examinations, but with t[illegible] him, it is the only way in which the business c[illegible] occasionally unnecessary questions and answ[illegible] will, however, depend much on the character [illegible] trate, for intelligence is certainly not one of t[illegible] Omlah; but the real fact is, that by the [illegible] tongued Serishtadar reads in two minutes, what a Mohurir has taken a quarter of an hour to extract from a prosecutor or witness, supplementary questions are put by the Magistrate *vivâ voce*, and recorded, but the bulk of the evidence is taken, I believe, as I have mentioned, in the *presence* of the Magistrate. Apply the course of procedure adopted in the Sessions Court, where the Judge is exclusively employed in the examination of one person, or let the Magistrate attempt to try cases *ab initio vivâ voce*, he merely taking notes without any record being made, and the whole machine of justice would stop.

5. I hold it to be quite impossible for a Magistrate of any of our extensive zillahs to have leisure; to relieve him then in the first instance of a portion of his duties by the location of Officers in the interior is a "*sine qua non*." But then a very important question arises, shall we employ this Officer in tracing out and bringing to justice,

offenders of the higher class, such as dacoits, murderers, &c., or shall he not only attempt this, but also to bring justice home to every man's door by the decision of assaults, petty larcenies, and misdemeanours? It will not admit of doubt that crimes, most deeply affecting social security, are now frequently concealed, or committed with impunity, and, it is, I think, equally clear the duty of Government in the first instance to deal with them, and till a great improvement takes place in this respect, I would not impair the efficiency of the Deputy Magistrates by occupying their time in the decision of trivial cases.

6. It is impossible in the consideration of this point to keep out of view that within circles of a much more limited circumference than will be entrusted to the Deputy Magistrates, are a set of Officers deciding suits to an amount, which would *a fortiori* argue their fitness for the disposal of petty Police cases. It is to be recollected, that this body is being gradually purified by death, enlightened by education, and stimulated by the hope of promotion. Can they be made available? and, again if objections exist to such an arrangement as a general measure, should that prevent its partial introduction where the character or leisure of a particular Officer would seem to warrant the exception?

7. I would urge the consideration of this point from the conviction I feel that so much remains to be done, in our successful treatment of the more heinous crimes, and the efficiency of the Police. At the same time, I, by no means, am disposed to regard this concealment, or inefficiency as so radical, or so peculiar to India, as is sometimes stated, crimes are concealed and offenders escape in India; but where does not the same obtain? Certainly England is no exception. The Return of crimes, reported to be committed there, are notoriously defective. The only offence on which anything approaching correct data could be ascertained by the Constabulary Force Committee was that of the forgery of Bank Notes, and it appeared that during a series of years, 1805 to 1823, the average was one conviction for every 167* offences; this it will be borne in mind refers to a period little more than 20 years ago.

* Constabulary Force, first Report, page 8.

8. To return, however, to the first point, no great delay occurring in the decision of petty cases by Officers subordinate to the Magistrate

from the deposition of the witnesses being recorded with the exception of the rescission of obvious redundancies, which the Magistrates are best qualified to suggest, I would not propose any further alteration, merely observing, that the perusal of the abstract of information, whether in the form of a Register or Roobukaree, would generally suffice for purposes of appeal or supervision. It is, however, of the greatest importance that the abstract should be drawn up in the vernacular dialect of the province, no advantage resulting from increased facility on the part of the presiding Officer using his own language can be compared with the benefits of publicity and confidence, gained under the present system. For the people of Bengal, Bengalee is the only language,

> "Hoc sermone pavent: hoc iram, gaudia, curas,
> Hoc cuneta effundunt, animi secreta."

9. With regard to the restriction of appeals preferred to the Magistrate, as the Law at present stands, he has only to attend to light sentences or fines imposed by Assistants [illegible] inferior native Officers; orders which require [illegible] supervision than others apparently of great [illegible] for the present only make final orders pa[illegible] class, involving no imprisonment.

10. With regard to the simplification and condensation of the proceedings of the Magistrates and Deputy Magistrates, the question is reduced to a very small compass; if a Magistrate or Deputy Magistrate has only to examine 8 or 10 witnesses a day, he might do it himself, and merely enter the abstract of evidence: the system would then be more healthy, and the record much reduced, but with various other calls on him, a run of cases perhaps trebling that number, it is clearly visionary to expect it from him. The only practicable way would therefore seem to be, to require the Officer to take the evidence *bonâ fide* himself, unless when prevented by a press of business, it being the duty of the superior Officer to verify the necessity of the recourse to the old system when resorted to. In both cases, the Register or Roobukaree would suffice for supervision or appeal; in the latter, however, there would be the deposition of the witnesses with the Record. The period of appeal or stated time for

supervision having passed, there would be no occasion for the preservation of such papers.

11. With regard to appeal, the superior standing and greater experience of the Magistrate would render a distinction necessary between him and the Deputy or Assistant located in the interior. To invest these latter Officers with increased powers, to remove them from the immediate eye of the Magistrate, and at the same time to let appeals only lie from their orders on matters of *law*, would, in my opinion, be risking the success of the whole measure. The person, who hears the evidence, is certainly better qualified to come to a correct estimate of its credibility than another, who only reads it over, but this only holds *ceteris paribus*, and it may fairly be questioned, whether the fact of an Officer, having apprehended a man after many failures, is not likely to disturb that equality; still it might be advisable to make the orders of the Magistrate and Deputy Magistrate final in some cases, and in permitting an appeal from Magistrates only when the sentence passed was in excess of six months' imprisonment, or 200 rupees, or three months' imprisonment with 100 rupees; and on orders passed by Deputy Magistrates, or Assistant Magistrates exercising the powers of Joint Magistrate, to half that period and amount, sufficient latitude would, in my opinion, be conceded. On questions of law, I consider an appeal should lie without reference to the period of imprisonment or amount of fine. It should be imperative on the person preferring an appeal, to file a copy of the " order appealed against, which would ordinarily admit of an immediate decision by the Appellate Court."

12. I do not think the assistance of the appellant can be further dispensed with; it is a most powerful check on any abuse of authority. It may be resorted to too freely, but still there is this satisfaction, it is a fault on the right side—in thus retrenching it, however, we still bring it to bear on all the more important orders of the Magistrate, and I think it improbable, that any gross cases of injustice or inability can escape exposure.

13. With reference to appeals from the orders of Session Judges, I would observe, that such Officers having nothing to do with the

getting up of cases tried by them, the bias which might unconscionably prejudice the Magistrate does not exist, I would allow an appeal from all sentences passed by them on matters of law, but in other respects, where that functionary concurred with a Jury or Law Officer, I would make his orders final.

I have the honor to be,

Sir,

Your most obedient servant,

T. C. SCOTT,

Session Judge.

Zillah East Burdwan, the 21st May, 1845.

TO J. HAWKINS, ESQ.,

Register to the Court of Nizamut Adawlut, Fort William.

SIR,

I much regret that my time, since the receipt on the 23d March of your letter Circular of the 28th February last, enclosing one from the Secretary to the Government of Bengal, has been so much engrossed in the reduction of arrears of civil business, as to prevent my devoting that attention to the subject, which its importance requires; and even now that I have given up my office in order to proceed to the Hills, the impossibility of postponing any longer my reply, compels me to submit a very hasty and imperfect report of my sentiments on the points proposed for discussion.

2. The simplification of the proceedings not only of the Magistrate's Courts, but of the Criminal Courts generally, is an object the importance of which cannot be too highly estimated, as the present cumbrous system of record even in the Sessions Court very much diminishes the advantage, in having the parties before it, which the Court of First Instance is admitted to possess over that of Appeal, in ability to judge of evidence and fact.

3. The language in which the proceedings are recorded in the province of Bengal from the awkwardness of the character, is written so slowly as greatly to increase the weight of this objection. I have been repeatedly occupied in the Sessions Court upwards of a fortnight upon one trial, sometimes even as much as a month, hardly ever less

than two days, however simple the case, so tedious is the process of recording the evidence in Bengalee. Upon these occasions as I have been much in the habit of taking notes at length, of the most important parts of the evidence, I have had many opportunities of proving that what occupied the quickest of the deposition writers twenty minutes, may be taken down from the mouth of the witness in a literal English translation in five; and that the material points of a deposition written in an hour might be compressed into a few lines, which in English it would not take a tenth part of that time to write.

4. Many are the inconvenient consequences of this protraction of trials besides those noted in the Secretary's letter. *First.*—The increased expense of the administration of justice in the multiplication of Judges. *Secondly.*—The continual distraction of the attention of the Judge from the trial, which should engross his whole attention, to a diversity of miscellaneous matters of too pressing a nature to be left in abeyance. *Thirdly.*—The opportunities given by delay, and the repeated adjournment of the Court from day to day, for tampering with witnesses. The extent to which these are availed of, is, I am sorry to say, too often observable during the progress of a trial.

5. Of the extent of the evil in the Magistrate's Court, it is unnecessary to say anything, as it is perfectly notorious, that under the existing system, overloaded as he is with business, all the advantage a Magistrate can derive from having the parties before him, consists in putting a few hasty questions to the witnesses, who have been already examined and cross questioned virtually in his absence.

6. The present system of record must be then altogether abandoned, and the plan sketched out in the letter under discussion, seems admirably calculated for the attainment of the object in view.

7. The introduction, however, of any such plan of record must not only be accompanied as demonstrated in the letter by a thorough change in regard to appeals: but must, in my opinion, form only a part of a comprehensive plan for the revision of the system of administering criminal justice, by a change in the constitution and powers of the Magisterial and Judicial Criminal Courts, no less than in their mode of procedure.

8. The whole of my short experience, as a Judicial Officer, would have convinced me, had such proof been necessary, that the most zealous Magistrate does not usually make the most impartial and dispassionate Judge: and in this country where the judgment is beset by so many difficulties and liabilities to error from the universal prevalence of perjury and corruption, it appears somewhat anomalous that the judicial powers of the Magistracy should be more extended in a direct ratio to the magnitude of those difficulties.

9. These extensive powers are now about to be vested in a set of Officers of an inferior grade, in whom a very high standard of judicial qualification in regard to high principle, matured judgment, and general enlightenment, will hardly be secured by the stipend and expectations, which are to be held out to them.

10. The present system of almost unlimited appeal from criminal sentences, however inconvenient in itself, seems to have originated in the necessity of supplying a corrective to the defects of the system of uniting extensive judicial powers with police functions in the same official, and as long as that system continues unaltered, and more particularly, if no modification is made in the provisions of Act XV. 1843, as I do not see how by any other means those defects are to be remedied, the abolition of appeals would appear to me to be unsafe, and likely to entail a great amount of injustice.

11. I cannot but think that when the intentions of the Government, respecting the appointment of four subordinate or Deputy Magistrates to a District, have been fully carried into effect, the Magistrates will have enough work to perform in their capacity of Superintendents of Police, without the addition of any extensive judicial functions: but should their time not be fully occupied by such duties, their numbers might be reduced and their jurisdiction increased.

12. The plan then, which I should be inclined to recommend, is something like the following:

First.—That there should be a Superintendent of Police, having the powers of a Magistrate, for committing and holding to bail for all offences, and for punishing inconsiderable misdemeanours with fine and limited imprisonment in any zillah, if necessary, otherwise one for two or more zillahs.

Secondly.—That his deputies should exercise the same powers in regard to commitment and punishment of petty offences.

Thirdly.—That the mode of procedure followed by both grades of Officers should be summary, similar to that suggested in Mr. Secretary Halliday's letter, except that in case of commitment, the abstract of the enquiry and grounds should be recorded in the form of a short Roobukaree, either in the Hindostanee, or in the language used in the Court, to which the commitment is made.

Fourthly.—That appeals from these functionaries, only on points of law, should be to the regular Criminal Courts.

Fifthly.—The Magistrate or Superintendent of Police should, of course, as at present, be in the commission of the peace.

13. If the abolition of appeals were extended to the sentences of Sessions Judges, to which I am aware of no weighty objection, the proceedings of their Courts in all cases cognizable by them without reference to the Sudder, might be simplified in the manner suggested for the inferior Courts, at all events in all cases tried with the assistance of a Jury or Assessors.

14. The time which would be thus gained by the greater dispatch in the trial of cases, added to that now occupied in hearing appeals from the Magisterial Courts, would, I think, be nearly sufficient for the disposal of the additional business in commitments, which would thus be thrown upon the purely judicial tribunals so as to obviate the necessity of creating any new ones. Perhaps an additional Judge might be required in those Districts, in which the Sessions of Jail Delivery are now held by the Judge of the neighbouring zillah on Circuit; but I should hope that a corresponding reduction in the existing number of Magistrates would counterbalance any increase of Judicial Officers, which might be rendered necessary by the change of system.

15. The Judges might all be assisted by the Principal Sudder Ameens, if empowered to try any commitments, which the Judges should think fit to transfer to them, under a certain limit, say petty offences punishable with three months' confinement, inclusive of six weeks in commutation of a fine not exceeding 100 rupees.

16. The only difficulty, which it appears to me, would be found in carrying out such a plan of Criminal Justice, lies in the necessity of

making a distinction in committing offenders, between crimes, which the Magistrates are now competent to punish, and those of the more heinous nature, which are usually committed to the Sessions, and in the mode of procedure in disposing of them.

17. Were no provision made to meet this difficulty, the change would have the effect of clogging the administration of justice with all the inconvenient technicalities and absurd principles of the Mohummadan law in a vast number of cases, which are now exempt from their influence.

18. The difficulty, however, it seems to me is more apparent than real, and might be easily obviated by inserting a clause in the new enactment, which the Sudder Court is to propose; vesting the Sessions Courts with a summary jurisdiction, expressly for the trial of these cases.

19. The above plan is, I am sensible, liable to objections as being experimental, and the details are perhaps susceptible of improvement, were time for reflection available. Of this, however, I am convinced, that without some radical change on the principle of separating the judicial from the Police functions, any material alteration in the system of record and mode of procedure of the Magistrate's Courts, and any great abridgment of the liberty of appealing from their decisions, will be found incompatible with the distribution of as great an amount of substantial justice as is at present attained.

I have the honor to be,

Sir,

Your obedient servant,

R. J. LOUGHNAN,

Civil and Session Judge of Backergunge.

On the River, Rampore Boaleah,
July 16, 1845.

No. 15 of 1845.

To the Register of the Court of
Sudder Nizamut Adawlut,
Fort William.

Sir,

I have the honor to reply to your Circular letter, No. 9, of the 28th February last, requiring my sentiments regarding reformation of the Criminal Courts.

2. In my humble opinion, the first indispensible step towards the due administration of Criminal Justice is to augment the number of Courts for decision of the great majority of cases; that is to say, of all cases in which the expense of prosecution is borne by private persons.

3. It seems to me contrary to reason, as it is notoriously opposed to fact, to suppose that the Foujdaree Courts do at present afford justice to the poor and weak, for whose protection they are chiefly necessary. No one, who considers the subject, can, I think, believe that a man living by his daily labor, perhaps on the verge of a district, distant three or four or more days' journey from the Court, where the influence of Magisterial authority hardly penetrates, and where in consequence there is most oppression, can hope for redress, saving at an expense in most cases unsupportable, in many ruinous, and only to be incurred under evils, which are quite intolerable; and when there is some hope, however delusive, that security may be obtained through its agency. The time occupied in reaching the Magistrate's Court, and living away from home, during the average time a cause is depending, must alone involve expense, which the great majority of the poor are unable to bear; add to this the price of the stamp, on which the petition of complaint must be written, the tullubana and a present to the peada taking out the summons for his witnesses, the necessity for predeposit of a whole month's diet allowance for those witnesses, the inveterate and at present generally necessary custom of feeing the Omlah of the Court, the great probability that counter complaints will be got up with much likelihood of success, and the risk that his own complaint may be deemed untrue amidst the conflicting evidence now existing in every case of the kind, and, I think, it must be allowed that in one distant, dilatory, expensive and otherwise

inefficient Criminal Court, a poor man is, in almost all cases, debarred from obtaining justice.

4. Looking at the other side of the picture, the prospect is even less satisfactory; a powerful man prosecutes a poor one; perhaps in order to wrest from him a piece of ground, or to punish him for having given adverse evidence in a previous case, or from some other ground of cupidity or revenge. Two witnesses, hacknied in the art of giving false evidence, and catechised in all the circumstances of cause, time, place, &c., swear, consistently to the assault, and the party accused is immediately sent for: he comes, and finds that a good *primâ facie* has been made out against him in his absence: he doubts the safety of confining his defence to naked truth, he doubts the utility of incurring the expense of re-summoning the complainant's witnesses, on the chance of their well tutored testimony breaking down under his unpractised powers of cross-examination: he does not dare to name, as witnesses, men of the better class; rightly surmising, that, if put to the inconvenience of travelling a long distance, they are not likely to aid his defence, and he thinks it safest, with his limited powers of summoning and dieting witnesses, if, indeed, he has resources enabling him to procure any, to add to the common truth, that the complaint has no other cause, than the enmity of a third party, not before the Court, the common lie that he (the defendant) was 20 miles off at the time of the alleged offence, and he names two witnesses, generally rude villagers like himself, whose testimony cannot stand exposure to the slightest cross-examination, but shews discrepancies, which often lead Magistrates, who are frequently Officers of short experience, to believe that they fully appreciate the merits of the case, that the evidence for the defence is wholly false, and that for the prosecution wholly true; and thus, defendants in innumerable cases, merely from enmity, through the present facility of procuring false witnesses, though want, often of time, sometimes of care, at others of experience and local knowledge, and even sometimes of power of sound judgment on the part of the Magistrates, are visited with punishment, and generally with the alternative of imprisonment, and so it is, that whether his impotence in prosecution, or defence is considered, our

so-called Courts of Justice are, to the majority of the poor and weak, little else than " a mockery, a delusion, and a snare."

5. If these facts, which I put forward as the veriest truisms, are true, they must not be winked out of sight, but be followed to their consequences. If distance from the Courts bars justice to the unsupported poor, it follows on this ground alone, that the recent and proposed appointments of a few Deputy Magistrates are but mere partial make-shifts, utterly inadequate to the wants and just rights of the people, and that another, and more extended measure of relief must, sooner or later, be adopted.

6. I have long been of opinion, that the best way of meeting the exigency is, to invest the Moonsiffs with Criminal powers to receive and dispose of all cases of simple assault, and perhaps to prepare for the Magistrate's decision all petty cases of theft, with or without burglary, and certainly to decide cases under Act IV. of 1840, such an arrangement would, I am sure, be hailed with joy by the people, and it has but a single drawback.

7. The drawback is, that some of the Moonsiffs are corrupt and inefficient, but it is acknowledged that since their condition has been ameliorated, corruption has declined, and that it now chiefly exists among those who have no hope of rising above their present state, and are unsatisfied with a salary, which is merely sufficient for respectable maintenance. No one can doubt that the salaries of the Moonsiffs will shortly be raised above the salaries of Police Darogahs, to the still further improvement of their conduct; and where corruption or inefficiency are found to exist, removal from office should be promptly effected; greater strictness on these points appears to me just and necessary, and tenure of office by a Moonsiff should no longer be held compatible, either with a doubtful character or want of énergy, or ability. Entertaining these views, I do not look upon the drawback I have mentioned as an insuperable evil, and hold that the occasional total disorganization of a whole district, when under the direction of an inefficient Magistrate, is sufficient to counterbalance the partial misconduct of a few Moonsiffs, and that such partial misconduct is preferable to the present state of things.

8. I will now enumerate some of the advantages, which would accrue to the people from adoption of the arrangement under contemplation. *First.*—In placing Courts of Justice nearer to the houses of suitors, they would be less expensive to visit, a smaller sum would be necessary to effect the service of a summons, a smaller predeposit of diet allowance for witnesses, if indeed any, would be necessary, while the multiplication of the Courts would expedite the transaction of business, and from all these sources of economy, both of time and money, justice would be speedier and cheaper to all, and on this account much more accessible to the poor, who are at present in most cases, absolutely barred from obtaining it. *Secondly.*—The work would be better done. Not having an immense jurisdiction, the Moonsiff would speedily appreciate the merits of the different disputes for land, and the character of the most frequent and prominent disputants in his Court; and this local knowledge would give him a clue of the real merits of the cases of assault, some true and other false, which are now instituted in great numbers, year after year, long after the land, their prolific source, has been adjudged to one party or the other; such cases would seldom appear to challenge the local knowledge of the Moonsiff, and all that would appear, would, under that knowledge, be decided with a certainty of justice, which their present and past numbers shew to be both unattained and unattainable under the present system; moreover, if the Courts I propose, be established, a better class of witnesses, now seldom or never called on account of the manifold inconveniences of attendance, would be summoned, and by their more trustworthy testimony, aid the cause of truth; again, when there is more time for cross-examination and more local knowledge, perjury will be more frequently detected, and this will further clear the course of justice; moreover, being relieved from all petty cases, the European Magistrate would be better able to give his attention to the more important crimes and to the superintendence of his Police, on whom the vicinity of a Foujdaree Moonsiff would surely have a beneficial effect.

9. These advantages seem to me to be real and great, and I trust that they will be potent to effect the alterations herein contemplated.

10. There would, I think, be no necessity for compelling predeposit of diet allowance for witnesses summoned to give evidence before a Foujdaree Moonsiff, and it is obviously desirable to get rid of this source of exaction; it would, in my opinion, be merely necessary to oblige the party summoning to pay the witness before the Moonsiff his reasonable expences for coming, remaining and returning, under the alternative of forfeiting the benefit of his testimony, and I would, in all cases, render it incumbent upon complainants to serve through the peada taking out the summons for witnesses, a notice of the institution of the complaint, on the person against whom it is laid, in order that he may have an opportunity of attending and cross-examining the witnesses summoned by his accuser.

11. The important question of expence must now be considered, if the plan proposed be adopted, it will be necessary to revive in this District two Moonsiffships now abeyant, one of these might be filled by the Mahomedan Law Officer, whose salary would be saved; so that there would be in reality only the salary of one Moonsiff, and of the Omlah of two to be added to that of the present establishment; but the allowance for stationary and Omlah to each Moonsiff must be increased, and if efficiently at the rate of 40 rupees monthly; and I submit that the additional labor, temptation and responsibility, which will be devolved on the Moonsiffs, ought to be accompanied with a corresponding increase of not less than 50 rupees each, to their present insufficient salary.

12. I am convinced that all this expenditure will in reality cost the Government nothing, whenever the acquisition of justice is facilitated the demand for it is increased, and thus the proposed facilitating system would lead to a large increase in the sale of stamps, so as fully to cover the additional allowance I have proposed to give for Omlah; but this is not all; the amount, which would be realized by fines, would exceed the amount now paid, and this would create a fund ample to furnish the additional sums of 50 rupees each, which I would give monthly to each Moonsiff.

13. There is a great tendency on the part of young European Officers to impose fines in light cases disproportioned to the circumstances of the people. When they are fined according to their circum-

stances, they are seldom able to pay at once the amount demanded, and before they can send to their homes and raise it, great part of the period of their imprisonment must, in many cases, have elapsed, at all events the Rubicon of the Jail has been passed, and the convict then often prefers to go through the remaining period of his sentence, rather than pay the requisite price of redemption. A Foujdaree Moonsiff would be a far better judge of the proper amount of a pecuniary mulct, the person fined would be nearer home, which he might perhaps be allowed to visit under fixed conditions, at all events his relations would have ample warning of his sentence, and great exertions would be generally made with frequent success, to save him from imprisonment; and in this way the amount realized by fines would be largely increased.

14. I have now only to trouble the Sudder Court with my opinion on three points: the abbreviation of the Foujdaree Records, the abolition of Appeals, and the mode in which the labor of the Sudder Court in the revision of Sessions Cases may be diminished.

15. The great objection to detailed written depositions is the delay they cause in the dispensation of justice; but I beg to observe that this objection would lose most of its force by the abolition of almost all delay, under the alterations which I have recommended.

16. The necessity for such depositions seem mainly dependent on the necessity for appeals "on matters of fact," the very few appeals that are preferred "on points of law," turn generally on comparison of the order passed with the actual law, and require no examination of the evidence, but appeals "on matters of fact," in this country, where perjury is so continual, can seldom be satisfactorily determined without careful consideration of the assigned cause of the case, and also careful sifting of the evidence; the prominent points of almost every case, as declared by complainants or defendants, are generally confirmed by their witnesses, and these would, no doubt, appear in a Magistrate's notes, but such notes would often fail to shew what detailed written statements often exhibit, viz. sometimes discrepancies inconsistent with the supposition of truth, sometimes an equally fatal preternatural regularity in relation or coherence on minute points. Under these circumstances, it appears to me, as I have stated, that if

appeals "on matters of fact" be admitted, detailed written depositions must, as indispensible to the probability of a right decision, be continued also.

17. The question whether appeals on matters of fact shall be allowed or not, seems to depend on the question whether *all* our Magisterial Officers are so fitted for the discharge of their duties, with such approximation to perfection as our institutions do or can be made to bestow. The powers vested in such Officers are much too extensive to allow toleration, if there be no appeal on matters of fact of a single bad Officer, or any falling short in the scale of efficiency.

18. We should, I think, deceive ourselves, were we to suppose that we have or can have a *single* Magisterial Officer to whom it would be safe to trust, without the provision of appeal, the great powers conferred by the law; but that the great majority of our Officers have such rare ability, temper, experience, knowledge, power of unremitting attention and habits, deliberation as would be requisite in so irresponsible a functionary, contradicts all supposition, and surely we must in consequence still continue to allow freedom of appeal "on matters of fact."

19. However, apart from all speculation, the following statement of the number of appeals preferred last year from the decision of the Magistrate of Sylhet* to this Court, with their results, affords conclusive proof that it is impossible to abolish appeals:

* I think it right to observe that the Magistrate was over-worked, and was obliged to do his work very summarily, or have arrears.

	Pending at the commencement of the year.	Appeals in 1844.	Total.	Rejected or Confirmed.	Altered or Reversed.	Pending.
Regular, ...	2	154	156	103	45	8
Miscellaneous, ...	5	108	113	60	48	5
	7	262	269	163	93	13

20. Last month I tried, in the Sessions Court, a false charge of malicious wounding, and a false charge of wilful murder; the former I threw out without going into the defence, and in the latter, I have convicted the four-eye witnesses, for the prosecution of wilful perjury; hundreds of instances might be cited, but these two seem to shew clearly that liberty of appeal must be allowed.

21. Further, it is notorious that some Magisterial cers take the opinions of their Omlah in different cases, and allow them great weight; are not these opinions more likely to be given right, when there is the privilege of appeal? given wrongly, and contradicted by the Appellate Court, the giver would lose his influence and cease to be an oracle; moreover, young Magisterial Officers do the sooner learn their duty, by having their decisions tested on appeal and corrected by a Court of greater experience, and before which the merits of a case are more distinctly shewn than before a Court of First Instance, and these are reasons which seem to support the propriety of continuing appeals.

22. So far from wishing to abrogate the right to appeal, I would allow it in all cases; the records of this Court can shew an instance of a man acquitted by the Magistrate, but ordered by the Sessions Judge to be committed before the law restricting appeals was passed, who was finally sentenced capitally; and they can shew an instance, since the enactment of that law, in which men were acquitted of wilful murder, who, had they been committed to the Sessions Court, would, as far as I can judge of the case, have now been in transportation for life; and I frequently see cases, which lead me to regret deeply that the law in question, which has added greatly to the importance of securing the aid of a Magistrate's Omlah, was ever passed.

23. What we want is not a law abolishing the right to appeal, but a law empowering the Appellate Court to punish frivolous and vexatious appeals; under such a law I could hear every appeal preferred in the District, and have less work than I have now, especially if the plan of investing the Moonsiffs with foujdaree powers be ever carried into effect, for then the very distance of most of their

Courts from mine would alone diminish the number of frivolous appeals.

24. The last point I propose to notice is the mode in which the Sudder Nizamut Adawlut can be relieved of the duty of hearing appeals in trials before the Sessions Court.

25. Under the present law, a Judge can over-rule the opinion of his Assessors, who are consequently apt to take their cue, when they can, from the Judge. Had they equal power with the Judge, their independent opinion when it concurred with that of the Judge, might, I think, considering the deliberate manner in which the Sessions trials are conducted, and the experience of the Judges presiding in them, be made final and conclusive as to the guilt, as it now is to the innocence of a prisoner; in case of a difference of opinion between the Assessors and the Judge, reference might be made, for a final opinion, to a neighbouring Judge, or to selected Judges of reference, who might perhaps have an increase of salary, which would excite emulation, which the present dead level of equality among the Judges is less calculated to ensure. This arrangement would reserve to the Sudder Court the power of reducing punishments, and if thought necessary, the power to call for and revise, any decision, which the monthly abstracts might shew to be of questionable propriety, and it would, I think, leave to the persons brought to trial, as good a chance of justice as the Courts of any European nation do now provide.

I have the honor to be,
Sir,
Your most obedient servant,
H. STAINFORTH,
Judge.

Dewany Adawlut, Zillah Sylhet,
May 16, 1845.

W. RIDSDALE, MILITARY ORPHAN PRESS.